



2015 Annual Meeting

Real Estate Track

Wednesday, June 17, 2015

9:20 a.m. - 10:20 a.m.

New and Revised Title Standards

Presenter

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IOWA STATE BAR ASSOCIATION
2015 ANNUAL MEETING REAL ESTATE TRACK
JUNE 17, 2015

**REVISED AND NEW TITLE STANDARDS APPROVED
BY THE IOWA STATE BAR ASSOCIATION BOARD OF
GOVERNORS IN DECEMBER OF 2014**

Jeremy C. Sharpe
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**REVISED AND NEW TITLE STANDARDS APPROVED BY THE
IOWA STATE BAR ASSOCIATION BOARD OF GOVERNORS
IN DECEMBER OF 2014**

Five revised and one new Title Standards have been approved by the Iowa Title Standards Committee of the Iowa State Bar Association, by the Real Estate and Title Law Section of the ISBA and given final approval by the ISBA Board of Governors in December of 2014 as part of the Eighth Edition of the Iowa Land Title Standards.

The revised Title Standards included in this outline are as follows:

Title Standards 6.7, 10.4, 10.5, 10.6 and 15.3

The new Title Standard included in this outline is as follows:

Title Standard 4.13

Following are blacklined copies of the revised Title Standards and a clean copy of the new Title Standard, with a discussion following each as to the nature of and reason for the revision or creation of each of such Title Standard. Clean copies of the revised Title Standards are attached at the end of this outline. A full copy of the Eighth Edition of the Title Standards, as revised, can be viewed and or downloaded by ISBA members from the ISBA website.

REVISED TITLE STANDARD 6.7

6.7 PROBLEM:

Rev 12/14

May Iowa Code § 624.23(2) be relied upon to remove judgment liens appearing in the chain of title and support a determination that a title is marketable?

STANDARD:

Yes. Iowa Code § 624.23(2) is remedial legislation embodying a procedure to permit transfer of a homestead free of any judgment lien provided either by an order for immediate release of the lien as provided in §624.23(2)(c) or when:

- (1) a proper written demand, including an affidavit showing that the property is not subject to the lien of judgment, has been served on the owner of any judgment;
- (2) no levy of execution has been made against the real estate within thirty days from the date of service of the demand; and
- (3) a copy of the written demand and proof of service has been filed in the court file of the case in which the judgment giving rise to the alleged lien was entered.

Authority:

In re Estate of ~~Tolson~~ Toison, 690 N.W.2d 680 (Iowa 2005)

Braunger v. Karrer, 563 N.W.2d 1 (Iowa 1997)

Keane v. United Guar. Indem. Co. (In re Keane), 7 Bankr. 844 (Bankr N.D. Iowa 1980).

Mitchell v. West, 93 N.W. 380 (Iowa 1903).

Lamb v. Shays, 14 Iowa 567 (1863).

Iowa Code §§ 561.21, 624.23(2) (~~2011~~ 2013).

Iowa Code §623.23(2)(b), referencing §654.4A(1)- (3) (2013). (Simplified service on judgment creditors).

Iowa Code §624.23(2)(c) (2013) (Immediate release of judgment lien on posting of cash security).

Redfern, Judgment Lien Does Not Attach to Homestead, 1980 Iowa Land Title

News Sept./Oct. at 7.

COMMENT:

Under Iowa Code § 561.21 only a very limited class of judgments are liens against the homestead. Prior to the enactment of Iowa Code § 624.23(2), judgment debtors were unable to convey marketable title to otherwise exempt homestead real estate without a declaratory judgment or quiet title action to establish that a judgment of record was not a lien. Iowa Code § 624.23(2) now provides a procedure for establishing that judgments upon which execution has not been levied within thirty days from the date of service of proper written demand are not liens upon real estate claimed as a homestead.

It should be noted that the enactment of Iowa Code § 624.23(2) did not generally change existing case law as to what judgments may in fact be liens on a homestead. Unless a judgment arises out of a claim as described in Iowa Code § 561.21 or the real estate claimed as a homestead exceeds the limitations prescribed by Iowa Code §§ 561.1-.3, the judgment is not a lien on the homestead. Presumably judgment creditors whose interest is not a lien on a homestead will not levy execution when notice is served under Iowa Code § 624.23(2) because the statute requires the preparation and service of an affidavit stating facts why the judgment is believed not to be a lien on the homestead property and because a wrongful levy would arguably subject the creditor to a claim by the judgment debtor.

Code §624.23(2)(b) provides that the written demand may be served on the judgment creditor under the simplified procedures of §654.4A, subsections (1) through (3).

Code §624.23(2)(c) provides for immediate release of judgment liens on the posting of cash security, either with the clerk of court, or, if provided by court order, in a restricted depository account or an attorney's trust account. To complete this procedure, it is necessary to serve both the written demand for execution and the order on the judgment creditor and file proof of service, but the lien as against the real estate is released upon entry of the order and the posting of the cash security. A prudent title examiner will require a record that the security in fact has been posted before clearing title.

DISCUSSION OF REVISED TITLE STANDARD 6.7

Title Standard 6.7 was revised to recognize changes in the provisions of Iowa Code Section 624.23(2) relating to the procedure to be used to remove of record from a homestead any judgment lien from which the homestead is exempt. Based upon the terms of new subsection (c) of Section 624.23(2), which provides a new procedure by which any lien on the homestead real estate can be removed immediately and before the running of the thirty (30) day period during which a noticed judgment creditor can initiate execution on the judgment, the Standard now recognizes that the lien of a judgment can be released of record from the homestead real estate in two ways:

- (a) Immediately upon the issuance of a court order providing for the immediate release of the claimed lien upon the posting of cash security with the clerk of court, or elsewhere as otherwise provided by the court order, in the amount of 125% of the judgment; or
- (b) After service of the required demand for execution on the judgment creditor and the filing of the proof of service of the written demand with the court, and the passage of 30 days after service of the demand without any execution being initiated by the judgment creditor.

In either scenario, the written demand for execution (and if a court order is entered releasing the lien upon the real estate upon the posting of cash security, a copy of such order) must be served on the judgment creditor with proper proof of service filed with the court, and the passage of 30 days without execution on the judgment by the judgment creditor, in order to support of record the release of the judgment as a lien on the real estate or on the posted cash security. However, under the court order/cash security scenario, the court order for such cash security together with the posting of the cash security as provided in the order immediately releases the lien from the real estate, and the judgment must then be executed, if at all, upon the cash security. This procedure facilitates the passage of title to the real estate free of the judgment lien by the title examiner without waiting the 30 days during which execution on the judgment can be initiated. However, as noted in the Comment to the Revised Title Standard 6.7, we would recommend that a prudent title examiner require proof of the posting of the cash security be in accordance with the court order before clearing title as to the real estate.

The Title Standard and the Comment reference the 624.23(2)(b) requirement that the written demand to the judgment creditor include an affidavit stating facts as to why the judgment is believed not to be a lien on the homestead property. The Comment also cites the Section 624.23(2)(b) provision allowing service of the written demand on the judgment creditor under the simplified procedures of Section 654.4A subsections 1 through 3 of the Iowa Code (service by certified mail with proof of delivery on the creditor, the creditor's registered agent, or, under certain circumstances, the creditor's attorney of record).

REVISED TITLE STANDARDS 10.4 AND 10.5

10.4 PROBLEM:

Rev 12/14

When a mortgage, trust deed, contract, or other security instrument is more than twenty years old, but the record of the ~~mortgage instrument, or any amendment or extension thereof~~, does not show the date of the maturity of the debt secured thereby, and there is no extension agreement of record fixing the maturity of the debt being within the last ten years, is the mortgage or similar security instrument barred by Iowa Code §614.21?

STANDARD:

Yes, unless the mortgagee or other beneficiary of the security instrument is the federal government or one of its agencies.

Authority:

Ramiller v. Ramiller, 236 Iowa 323, 18 N.W. 2d 622 (1945).

Willow Tree Investment, Inc. v. Wilhelm, 465 N.W. 2d 849 (1991).

US v. Ward, 985 F.2d 500 (10th Cir., 1993) (no statute of limitations on *in rem* enforcement of mortgages to the federal government).

COMMENT:

See Title Standard 1.9. If the security instrument is an installment purchase contract, see Title Standard 4.12.

10.5 PROBLEM:

~~If a mortgage is more than twenty years old, secures a principal indebtedness and also future advances and the record shows that more than ten years have elapsed since the date of the maturity of the principal indebtedness secured thereby, but fails to show the date of maturity of the debt represented by future advances, and there is no extension agreement of record fixing the maturity of either the principal indebtedness or future advances within the last ten years, is the mortgage barred by Iowa Code §614.21?~~

When an instrument filed for record more than ten years ago refers to an unrecorded real estate mortgage or similar security instrument and such instrument does not disclose the due date of such unrecorded mortgage or similar security instrument, is it necessary to require any further explanation?

STANDARD:

~~——~~ Yes. No, unless the mortgagee or other beneficiary of the security instrument is the federal government or one of its agencies.

~~Authority:~~ Authority:

Ramiller v. Ramiller, 236 Iowa 323, 18 N.W. 2d 622 (1945).

Willow Tree Investment, Inc. v. Wilhelm, 465 N.W. 2d 849 (1991).

Iowa Code §614.21 (2013).

US. v. Ward, 985 F.2d 500 (10th Cir., 1993) (no statute of limitations on *in rem* enforcement of mortgages to the federal government).

COMMENT:

Iowa Code §614.21 applies to such documents which are not of record but which are described or referred to in any other instrument which is filed of record. The limitation is ten years from the due date of such document if disclosed in the record and, if not so disclosed, then ten years from the date of the recording of the instrument containing such reference. See Title Standard 1.9. If the security instrument is an installment purchase contract, see Title Standard 4.12.

DISCUSSION OF REVISED TITLE STANDARD 10.4

The revision to Title Standard 10.4 involved two things:

- (i) first, we incorporated into the Standard the exception to the statute of limitations bar of Iowa Code Section 614.21 as to the enforcement of mortgages or other security instruments running in favor of the federal government or one of its agencies, based on a case referenced in the Authorities holding that there is no statute of limitations on the in rem enforcement of such instruments. This mirrors the exception incorporated in March 2014 in Title Standard 1.9 as to the necessity for the abstractor to show such instruments even if more than 20 years old.
- (ii) second, we determined that the language of Title Standard 10.4 was broad enough to apply to a failure of a security instrument to show of record the maturity date of a debt obligation whether it was the original debt or future advances being secured by the security instrument. This led us to delete the then existing Title Standard 10.5, which was substantially the same as Title Standard 10.4 except for its specific reference to a failure of the security instrument to show of record the maturity date of any future advances.

The Comment to Title Standard 10.4 references Title Standard 1.9 to incorporate its reference to Title Standard 1.1 with regard to how a title examiner should determine the actual probability of the enforcement of a security instrument to the federal government and the appropriateness of raising an objection based on such security instrument. The Comment also references Title Standard 4.12, which was adopted in March of 2014 to address the specific statute of limitations on the enforcement by the vendor or the vendee of a contract for deed.

**DISCUSSION OF NEW TITLE STANDARD 10.5
(REVISED FORMER TITLE STANDARD 4.1)**

New Title Standard 10.5 reflects the revision and renumbering of now deleted Title Standard 4.1 in order to include the substance of that deleted Title Standard in Chapter 10 dealing with the applicability of the Section 614.21 Iowa Code limitation on enforceability of security instruments. The new Title Standard 10.5 addresses the issue of the limitation on enforceability as applied to an unrecorded security instrument referenced in another instrument filed of record more than ten (10) years ago, when such reference does not disclose the due date of the referenced security instrument.

The revision to now deleted Title Standard 4.1 made in new Title Standard 10.5 is again the exception to the applicability of Section 614.21 Iowa Code limitation to the in rem enforcement of security instruments made in favor of the federal government or one of its agencies. Again, as with Title Standard 10.4, there is added a reference in the Comment to Title Standard 10.5 to Title Standard 1.9 and Title Standard 4.12 to incorporate their concepts of the importance of Title Standard 1.1 in dealing with unreleased federal security instruments, and specific limitations on the enforcement of contracts for deeds.

REVISED TITLE STANDARD 10.6

10.6. PROBLEM:

Rev. 12/14

May Iowa Code §§ 614.24 through 614.28 be relied upon to bar use restrictions, including restrictive covenants, and reversions to land after twenty-one years from recording when a verified claim has not been filed within the twenty-one year period?

STANDARD:

Yes. The State Uses and Reversions Act constitutes valid marketable title legislation.

Authority:

Hawk v. Rice, 325 N.W.2d 97 (Iowa 1982)

Amana Society v. Colony Inn, Inc., 315 N.W. 2d 101 (Iowa 1982).

Compiano v. Kuntz, 226 N.W. 2d 245 (Iowa 1975).

Presbytery of Southeast Iowa v. Harris, 226 N.W. 2d 232 (Iowa 1975).

Chicago & N. W. Ry. v. City of Osage, 176 N.W. 2d 788 (Iowa 1970).

Texaco, Inc. v. Short, 454 U.S. 516 (1982).

COMMENT:

The limitation on "reversion, reverted interests or use restrictions" applies to possibilities of reverter, rights of reentry (powers of termination) and restrictive covenants whether the limitation, condition or restriction has been breached and whether the purpose is obsolete or still beneficial. The limitation applies against municipal corporations. The limitation applies to minors, the mentally ill and persons entitled to relief under the Servicemembers Civil Relief Act (SCRA)—50 U.S.C. App. §§ 501 et seq.—(2006), as amended. However, § 614.24 now provides that it does not apply to a reversionary interest in railroad property if the reversion is caused by the abandonment of the property for railroad purposes after July 1, 1980. (This section would not appear to affect reversionary interests which were cut off by operation of Iowa Code § 614.24 prior to July 1, 1980.)

These sections do not apply if the interest owned is an easement rather than a possessory estate subject to a reversion or use restriction.

Authority: The State Uses and Reversions Act originally did not define the term "use restrictions." In 2014, Iowa Code § 614.24 was amended by the addition of new subsection (4) setting forth the definition of the term "use restrictions," as follows:

Hawk v. Rice, 325 N.W. 2d 97 (Iowa 1982).

Haack v. Burlington N., Inc., 309 N.W. 2d 147 (Iowa Ct. App. 1981).

Johnson v. Burlington N., Inc., 294 N.W. 2d 63 (Iowa Ct. App. 1980).

See also

4. As used in this section "use restrictions" means a limitation or prohibition on the rights of a landowner to make use of the landowner's real estate, including but not limited to limitations or prohibitions on commercial uses, rental use, parking and storage of recreational vehicles and their attachments, ownership of pets, outdoor domestic uses, construction and use of accessory structures, building dimensions and colors, building construction materials, and landscaping. As used in this section, "use restrictions" does not include any of the following:
Texaco, Inc. v. Short, 454 U. S. 516 (1982).

a. An easement granting a person an affirmative right to use land in the possession of another person including but not limited to an easement for pedestrian or vehicular access, reasonable ingress and egress, solar access, utilities, supporting utilities, parking areas, roadway, bicycle paths, and water flow.

b. An agreement between two or more parcel owners providing for the sharing of costs and other obligations for real estate taxes, insurance premiums, and for maintenance, repair, improvements, services, or other costs related to two or more parcels of real estate regardless of whether the parties to the agreement are owners of individual lots or incorporated or unincorporated lots or have ownership interests in common areas in a horizontal property regime or residential housing development.

c. An agreement between two or more parcel owners for the joint use and maintenance of driveways, party walls, landscaping, fences, wells, roads, common areas, waterways or bodies of water.

DISCUSSION OF REVISED TITLE STANDARD 10.6

Title Standard 10.6 was revised to recognize in the Comment the newly legislatively adopted addition of a new subsection (4) to Iowa Code Section 614.24, setting forth a definition of the term “use restrictions” in that Code section. More important than just a definition of what constitutes “use restrictions” in new subsection (4) is the discussion of what matters do not constitute “use restrictions,” which addresses certain situations for which Section 614.24 had previously been cited to characterize certain affirmative rights or agreements between landowners as being subject to the time limitation of that Section as use restrictions.

Subsection (a) of new subsection (4) confirms that affirmative easement rights are not use restrictions under Section 614.24. An affirmative right to use land owned and/or in the possession of another for say parking or ingress and egress by the benefitted property owner may indeed limit the use of portions of the burdened land by the party in possession of that land and therefore to that party constitute a use restriction in fact (e.g. prohibiting construction of another improvement on such burdened areas). However, subsection (a) recognizes that such affirmative rights are different from either a restriction on a particular use of one’s property to protect that use by another on that party’s property free of competition, or from a universal prohibition of a particular type of undesirable use by all owners governed by the use restriction. This affirmative easement exception is a critical distinction necessary to support the rights of abutting landowners to agree to provide and maintain rights across each other’s properties needed to facilitate and promote the intended use and or operation of the businesses on their respective properties.

Subsection (b) of subsection (4) recognizes that agreements between two or more parcel owners to share in the costs and obligations which benefit, burden or otherwise affect all of their properties, whether the parties to the agreement are owners of individual lots or of ownership interests in common areas in a horizontal property regime or residential housing development, are not use restrictions which a party can later argue have expired and no longer affect that party’s property or their obligations with regard to other property owners. This distinction is critical to the development of condominiums, townhomes and other developments where areas and facilities for common use are desired, and expenses for maintaining the same are to be shared through a homeowner’s association that can levy assessments for that purpose.

Subsection (c) of subsection (4) is an additional recognition that parties to a mutually beneficial agreement as to joint use and maintenance of certain improvements and areas on their properties (e.g. a joint driveway use and maintenance agreement) cannot claim in the future that their property is no longer subject to such agreement as a use restriction on their property, due to the failure by any party to file a claim preserving the agreement under Section 614.24.

With the addition of the language from Section 614.24(4) in the Comment to Title Standard 10.6, the list of case law authority in the Comment pertaining to the inapplicability of Section 614.24 limitations to affirmative easements was removed.

REVISED TITLE STANDARD 15.3

15.3 PROBLEM:

Rev 12/14

If an instrument affecting real estate is executed by a limited liability company, is it necessary to obtain a showing from its certificate of organization, operating agreement, or a duly authorized company resolution that the individual who executed the instrument was authorized to do so?

STANDARD:

NOTE: There are two standards that follow. Because of substantive Iowa Code amendments that became effective on July 1, 2013, there is a standard applicable to instruments executed on or after July 1, 2013, and a different standard applicable to instruments executed for limited liability companies subject to chapter 489 of the Code of Iowa and prior to July 1, 2013.

FOR INSTRUMENTS EXECUTED ON OR AFTER JULY 1, 2013:

No. However, if the limited liability company's certificate of organization, operating agreement, statement of authority or a duly authorized company resolution are shown in the abstract, the examiner is bound to take notice of any limitations contained in any such documents with respect to the powers of the individual to execute the instrument on behalf of the company.

Authority:

Iowa Code § 489.407 (2013)

2013 Iowa Acts (85 G.A.), ch. 108, § 2 (amending Iowa Code § 489.302)

2013 Iowa Acts (85 G.A.), ch. 108, § 4 (to be codified as Iowa Code § 489.407A)

2013 Iowa Acts (85 G.A.), ch. 108, § 5 (to be codified as Iowa Code § 558.72)

FOR INSTRUMENTS EXECUTED PRIOR TO JULY 1, 2013:

Real property acquired by a limited liability company ("LLC") and held in the LLC name may be conveyed only in the LLC name. Any conveyance from an LLC that is managed by its members so made and signed by a majority of the members and containing a recitation that the conveyance is being made in the ordinary course of the LLC's business or affairs shall be presumed to be authorized by the LLC in the absence of knowledge of acts, facts, or restrictions indicating a lack of authority. Any conveyance from an LLC that is managed by managers so made and signed by a majority of the managers and containing a recitation that the conveyance is being made in the ordinary course of the LLC's business or affairs shall be presumed to be authorized by the LLC in the absence of knowledge of acts, facts, or restrictions indicating a lack of authority.

The record must disclose: (1) whether the LLC is member-managed or manager-managed; (2) whether the conveyance is in the ordinary course of LLC's business or affairs; and (3) the authority of the signer to act on behalf of the LLC.

Absent actual or constructive knowledge to the contrary, and unless a properly filed and recorded Statement of Authority contradicts any of the following showings, evidence of

the foregoing matters may be provided of record by one or more of the following: (a) the LLC's written operating agreement; (b) a duly filed and recorded Statement of Authority ; (c) an affidavit signed by a person with knowledge; or (d) a recitation contained in the instrument of conveyance (including the acknowledgement of such instrument). Any instrument of conveyance signed by the person or persons (whether members, managers, or officers) so authorized of record shall be presumed to be authorized by the LLC. If the transaction is not in the ordinary course of business, the consent of all members is required.

Authority:

Iowa Code §§ 489.407(1) and .302 (2013), prior to the enactment of 2013 Iowa Acts (85 G.A.), ch. 108, H.F. 566.

COMMENT:

Iowa Code Chapter 489 (2009) enacts the Revised Uniform Limited Liability Company Act. Before January 1, 2011, and for LLCs that did not adopt the chapter 89 regime, Iowa Code chapter 490A applied, and generally, absent a record to the contrary, the rule presuming apparent authority of either members or managers executing an instrument on behalf of the LLC applied to a transaction appearing to be in the ordinary course of business. Chapter 490A is now repealed. After January 1, 2011, Chapter 489 governs LLCs. Effective on July 1, 2013, a number of provisions of the Iowa Code relating to LLCs were amended, including §§ 489.302, 489.407, 489.407A, 558.72 and 614.14A. 2013 Iowa Acts (85 G.A.), ch. 108, H.F. 566.

Real property acquired by a limited liability company ("LLC") and held in the LLC name may be conveyed only in the LLC name. An LLC may be either member-managed or manager-managed. An instrument of conveyance on behalf of an LLC is authorized either: (a) as provided in the operating agreement, (b) as provided in a statement of authority filed with the Secretary of State and county recorder, or (c) with consent of all members in a member-managed LLC or consent of a majority of all managers in a manager-managed LLC. 2013 Iowa Acts (85 G.A.), ch. 108, § 4 (to be codified as Iowa Code § 489.407A).

One of the 2013 amendments was the addition of statutory warranties providing that an instrument of conveyance from an LLC, unless clearly and conspicuously provided to the contrary in the instrument, includes a warranty to the transferee by the person executing the instrument that the person executing the instrument has been duly authorized by the LLC and has the legal capacity to execute the instrument. 2013 Iowa Acts (85 G.A.), ch. 108, § 5 (to be codified as Iowa Code § 558.72). The title examiner may rely upon the statutory warranties as if such warranties were set forth in writing in the conveyance instrument itself.

2013 Iowa Acts (85 G.A.), ch. 108, § 6 (to be codified as Iowa Code § 614.14A) provides a statute of limitations barring claims seeking to invalidate a deed or real estate contract by an LLC based on the allegation that the execution of the instrument was not authorized by the LLC. See Title Standard 10.7 and Comment.

DISCUSSION OF REVISED TITLE STANDARD 15.3

In the revision made by the Title Standards Committee to Title Standard 15.3 effective in March of 2014 on the necessity of having a record evidence of the authority of a party to execute instruments affecting real estate on behalf of a limited liability company, we recognized that the new Section 558.72 of the Iowa Code providing that an instrument of conveyance, unless clearly providing to the contrary in the instrument, includes a warranty to the transferee that the person executing the instrument has been duly authorized by the LLC to execute the instrument. So the Title Standard was split into two parts to recognize (i) the doctrine of apparent authority applying to instruments executed after July 1, 2013 (the effective date of Section 558.72) and (ii) the requirements of what is to be shown of record under Chapter 489 of the Iowa Code governing authority of parties to act on behalf of an LLC for instruments affecting real estate and executed before July 1, 2013.

However, it was pointed out to the Committee thereafter by a couple of its members that there were certain instruments executed on behalf of LLCs prior to July 1, 2013 that would not have been subject to the provisions of Chapter 489 on the authority to sign, if they were executed before January 1, 2011 by LLCs that had not adopted the provisions of Chapter 489, but continued to operate under the provisions of the previous Chapter 490A (until repealed as of January 1, 2011). This is because Chapter 490A basically included an apparent authority rule as to parties authorized to sign instruments on behalf of LLCs.

Therefore, the Note as to the two applicable Title Standards at the beginning of Title Standard 15.3 which was first incorporated into the Title Standard as of March of 2014, has been revised to include in the instruments governed by the Title Standard relative to instruments executed before July 1, 2013 only those instruments executed by LLCs which were subject to Chapter 489 when the instruments were executed. As the Comment now notes, this means any instrument executed by an LLC before January 1, 2011 (after which all LLCs are subject to Chapter 489) that had not adopted the provisions of Chapter 489, will be governed by the apparent authority doctrine of Chapter 490A and not be subject to any requirement of record evidence of the authority of the signatory to act on behalf of the LLC, unless other actual knowledge or record evidence contrary to such apparent authority existed.

If the title examiner is aware, or is provided evidence, that an LLC executing a deed prior to January 1, 2011 had not adopted Chapter 489, then the examiner can rely on the apparent authority of the signatory absent actual or other record knowledge to the contrary, just as if the instrument had been executed after July 1, 2013.

NEW TITLE STANDARD 4.13

4.13 PROBLEM:

New 12/14

When the vendor under a contract for deed is deceased and there is no surviving joint tenant vendor, what is necessary in order for the vendee to secure marketable title in completion of the contract?

STANDARD:

Any one of the following would be acceptable:

- A. A deed delivered to the vendee in completion of the contract that had been placed in escrow by the vendor prior to the vendor's death.
- B. A deed in completion of the contract from the personal representative of the vendor's estate.
- C. A deed in completion of the contract from the person(s) who inherited the deceased vendor's personal property interest in the contract if the administration of the deceased vendor's estate has been completed.
- D. A deed in completion of the contract from the person(s) who inherited the deceased vendor's personal property interest in the contract as established by the will of the deceased vendor if it had been admitted to probate without administration and the record reflects proof of proper notice thereof and that any contest to the will is time-barred.
- E. When the death of the vendor occurred less than five years earlier and section 633.356 of the Code of Iowa is applicable, a deed from the successor(s) of the decedent, coupled with an affidavit of distribution as provided for under said section.
- F. A deed in completion of the contract from the heirs of a contract vendor who died more than five years earlier if the vendor died intestate and there has been no commencement of the administration of the estate of the vendor, or the vendor died testate and the vendor's will has not been admitted to probate (with or without present administration). In any such case, the title examiner should require a showing of record as to the identity of said heirs.

Authority:

Dettmer v. Behrens, 76 N.W. 853, 854 (Iowa 1898).

Beaver v. Ross, 118 N.W. 287, 289 (Iowa 1908).

In re Estate of Miller, 119 N.W. 977, 978 (Iowa 1909).

Larson v. Metcalf, 207 N.W. 382, 383 (Iowa 1926).

Junkin v. McClain, 265 N.W. 362, 365 (Iowa 1936).

Felmerv. Gruber, 261 N.W.2d 173, 174 (Iowa 1978).

See Seeley v. Seeley, 45 N.W.2d 881, 884 (Iowa 1951) (holding that a will that has not been probated has no effect).

Iowa Code §633.96 (2013).

Iowa Code §633.145 (2013). Iowa Code §633.331 (2013). Iowa Code §633.350 (2013).

Iowa Code §633.356 (2013) (providing for distribution of personal property by affidavit in connection with small estates).

Iowa Code §656.5 (2013). Iowa Code §656.9 (2013).

COMMENTS:

The execution and delivery of a contract for the sale of real estate works an equitable conversion as to ownership of the real estate. Ownership of the real estate (equitable title) passes to the vendee, while the vendor retains a mere personal property interest (legal title) to the extent of and as security for the unpaid balance under the contract. As such, it follows that liens suffered or permitted by the vendee after the execution and delivery of the contract constitute liens against the real estate, while liens suffered or permitted by the vendor after the execution and delivery of the do not constitute liens against the real estate.

When a vendor has deposited a deed in completion of a contract with a third party without reservation to recall and has directed that third party to deliver the deed to the vendee upon payment of the balance of the purchase price under the contract, the subsequent delivery of the deed by said third party upon full payment of the purchase price relates back to the first delivery. This is true regardless of the death of the vendor prior to the escrow agent's delivery of the deed to the vendee.

Upon the death of the vendor, the vendor's personal property interest in the contract passes directly to the distributees of the vendor's estate. However, the vendor's interest is subject to the possession of the personal representative and the control of the court for purposes of administration, sale or other disposition under the law.

When the death of the vendor occurred less than five years earlier, the vendee should secure a deed in completion of the contract from the personal representative of the vendor's estate. Upon full performance of the contract by the vendee, the personal representative of the vendor's estate may deliver a deed in completion of the contract to the vendee without prior order of court approving the same. When the vendor's estate is subject to administration in another state, ancillary administration in Iowa is not necessary in light of the nature of the vendor's interest as personal property. Rather, a proper deed in completion of the contract from the foreign personal representative, together with the recording of a certificate of appointment as prescribed under section 633.145 of the Code of Iowa is sufficient.

Pursuant to section 633.331 of the Code of Iowa, the probate of a will, the original administration of an intestate estate, or the ancillary administration of an estate, shall not be allowed after five years from the date of a decedent's death. This limitation provision does not apply to the probate of a will of a decedent who died prior to January 1, 1964. Also, it does not apply to the later administration of a will that was admitted to probate within five years after the decedent's death. When a vendor has died testate and there has been no timely admission of his or her will to probate, any claim to the vendor's interest by the distributees under the vendor's will is extinguished.

In the case of a deceased vendor, no showing is required as to the payment of or non-liability for federal estate tax and Iowa estate and inheritance taxes. Since the interest of the

vendor is nothing more than a personal property interest in the unpaid balance of the purchase price under the contract, any liability for federal estate tax or Iowa estate and inheritance tax as a result of the death of the vendor will have no impact on the vendee's title to the real estate.

See Title Standard 4.9, which addresses the effect of the death of a joint tenant vendor on the vendor interest in a contract for the sale of real estate.

DISCUSSION OF NEW TITLE STANDARD 4.13

New Title Standard 4.13 addresses the issue of how a contract vendee can obtain marketable title in completion of the contract if the individual vendor has deceased before that time, and there is no surviving joint tenant vendor. This Title Standard is very similar to Title Standard 7.7 dealing with from whom to obtain a release of a mortgage when the individual mortgagee has deceased.

This Title Standard and its Comments set forth and explain the rationale as to the parties from whom a deed in satisfaction of a contract should be obtained if the vendor has deceased in situations where:

- (1) A deed has been placed in escrow; or
- (2) There is a pending administration of the vendor's estate, whether by Iowa or foreign state administration; or
- (3) There is a completed administration of the vendor's estate, whether Iowa or foreign; or
- (4) There has been a will admitted to probate without administration and any contest to the will is time barred; or
- (5) The death of the vendor occurred less than 5 years ago, but the provisions of Section 633.356 of the Code as to the distribution of the personal property interest of a deceased person with a small estate are applicable; or
- (6) The death of the vendor occurred more than 5 years ago, but there has been no commencement of administration of the estate of the vendor nor any will of the vendor has been admitted to probate with or without present administration.

This Title Standard does not address the situation where less than 5 years have elapsed since the date of the vendor's death and no administration of the vendor's estate, nor admission of the vendor's will to probate, has been initiated or completed, and Section 633.356 of the Code would not apply. In such situation, the title examiner can refer to Title Standard 7.7(4)(i) and (ii) (deceased mortgagee) for the manner in which to proceed (requiring an administration of the vendor's estate or quiet title action or other judicial proceedings to establish who has a claim to the vendor's interest in legal title and the authority to convey the same).

The Comment to this Title Standard indicates there are no title concerns pertaining to any judgments against the vendor entered after the execution and delivery of the contract, nor pertaining to any death tax liens on the estate of the deceased vendor, since neither attach to the personal property interest of the vendor in a contract resulting from the equitable conversion of the vendor's real estate interest into a personal property interest upon the execution and delivery of the contract.

The Comment also refers the examiner to Title Standard 4.9 for guidance in the situation where there is a joint vendor surviving the deceased vendor under the contract.

CLEAN COPIES OF REVISED TITLE STANDARDS

TITLE STANDARD 6.7

6.7 PROBLEM:

Rev 12/14

May Iowa Code §624.23(2) be relied upon to remove judgment liens appearing in the chain of title and support a determination that a title is marketable?

STANDARD:

Yes. Iowa Code §624.23(2) is remedial legislation embodying a procedure to permit transfer of a homestead free of any judgment lien either by an order for immediate release of the lien as provided in §624.23(2)(c) or when:

- (1) a proper written demand, including an affidavit showing that the property is not subject to the lien of judgment, has been served on the owner of any judgment;
- (2) no levy of execution has been made against the real estate within thirty days from the date of service of the demand; and
- (3) a copy of the written demand and proof of service has been filed in the court file of the case in which the judgment giving rise to the alleged lien was entered.

Authority:

In re Estate of Toison, 690 N.W.2d 680 (Iowa 2005)

Braunger v. Karrer, 563 N.W.2d 1 (Iowa 1997)

Keane v. United Guar. Indem. Co. (In re Keane), 7 Bankr. 844 (Bankr N.D. Iowa 1980).

Mitchell v. West, 93 N.W. 380 (Iowa 1903).

Lamb v. Shays, 14 Iowa 567 (1863).

Iowa Code §§561.21, 624.23(2) (2013).

Iowa Code §623.23(2)(b), referencing §654.4A(1)-(3) (2013). (Simplified service on judgment creditors).

Iowa Code §624.23(2)(c) (2013) (Immediate release of judgment lien on posting of cash security).

Redfern, Judgment Lien Does Not Attach to Homestead, 1980 Iowa Land Title News Sept./Oct. at 7.

COMMENT:

Under Iowa Code §561.21 only a very limited class of judgments are liens against the homestead. Prior to the enactment of Iowa Code §624.23(2), judgment debtors were unable to convey marketable title to otherwise exempt homestead real estate without a declaratory judgment or quiet title action to establish that a judgment of record was not a lien. Iowa Code §624.23(2) now provides a procedure for establishing that judgments upon which execution has not been levied within thirty days from the date of service of proper written demand are not liens upon real estate claimed as a homestead.

It should be noted that the enactment of Iowa Code §624.23(2) did not generally change existing case law as to what judgments may in fact be liens on a homestead. Unless a judgment arises

out of a claim as described in Iowa Code §561.21 or the real estate claimed as a homestead exceeds the limitations prescribed by Iowa Code §§561.1-.3, the judgment is not a lien on the homestead. Presumably judgment creditors whose interest is not a lien on a homestead will not levy execution when notice is served under Iowa Code §624.23(2) because the statute requires the preparation and service of an affidavit stating facts why the judgment is believed not to be a lien on the homestead property and because a wrongful levy would arguably subject the creditor to a claim by the judgment debtor.

Code §624.23(2)(b) provides that the written demand may be served on the judgment creditor under the simplified procedures of §654.4A, subsections (1) through (3).

Code §624.23(2)(c) provides for immediate release of judgment liens on the posting of cash security, either with the clerk of court, or, if provided by court order, in a restricted depository account or an attorney's trust account. To complete this procedure, it is necessary to serve both the written demand for execution and the order on the judgment creditor and file proof of service, but the lien as against the real estate is released upon entry of the order and the posting of the cash security. A prudent title examiner will require a record that the security in fact has been posted before clearing title.

TITLE STANDARD 10.4

10.4 PROBLEM:

Rev 12/14

When a mortgage, trust deed, contract, or other security instrument is more than twenty years old, but the record of the instrument, or any amendment or extension thereof, does not show the date of the maturity of the debt secured thereby, and there is no extension agreement of record fixing the maturity of the debt being within the last ten years, is the mortgage or similar security instrument barred by Iowa Code §614.21?

STANDARD:

Yes, unless the mortgagee or other beneficiary of the security instrument is the federal government or one of its agencies.

Authority:

Ramiller v. Ramiller, 236 Iowa 323, 18 N.W. 2d 622 (1945).

Willow Tree Investment, Inc. v. Wilhelm, 465 N.W. 2d 849 (1991).

US v. Ward, 985 F.2d 500 (10th Cir., 1993) (no statute of limitations on *in rem* enforcement of mortgages to the federal government).

COMMENT:

See Title Standard 1.9. If the security instrument is an installment purchase contract, see Title Standard 4.12.

TITLE STANDARD 10.5

10.5 PROBLEM:

Rev 12/14

When an instrument filed for record more than ten years ago refers to an unrecorded real estate mortgage or similar security instrument and such instrument does not disclose the due date of such unrecorded mortgage or similar security instrument, is it necessary to require any further explanation?

STANDARD:

No, unless the mortgagee or other beneficiary of the security instrument is the federal government or one of its agencies.

Authority:

Iowa Code §614.21 (2013).

US. v. *Ward*, 985 F.2d 500 (10th Cir., 1993) (no statute of limitations on *in rem* enforcement of mortgages to the federal government).

COMMENT:

Iowa Code §614.21 applies to such documents which are not of record but which are described or referred to in any other instrument which is filed of record. The limitation is ten years from the due date of such document if disclosed in the record and, if not so disclosed, then ten years from the date of the recording of the instrument containing such reference. See Title Standard 1.9. If the security instrument is an installment purchase contract, see Title Standard 4.12.

TITLE STANDARD 10.6

10.6. PROBLEM:

Rev 12/14

May Iowa Code §§614.24 through 614.28 be relied upon to bar use restrictions, including restrictive covenants, and reversions to land after twenty-one years from recording when a verified claim has not been filed within the twenty-one year period?

STANDARD:

Yes. The Stale Uses and Reversions Act constitutes valid marketable title legislation.

Authority:

Hawk v. Rice, 325 N.W.2d 97 (Iowa 1982)

Amana Society v. Colony Inn, Inc., 315 N.W.2d 101 (Iowa 1982).

Compiano v. Kuntz, 226 N.W.2d 245 (Iowa 1975).

Presbytery of Southeast Iowa v. Harris, 226 N.W.2d 232 (Iowa 1975).

Chicago & North Western Railway Co. v. City of Osage, 176 N.W.2d 788 (Iowa 1970).

Texaco, Inc. v. Short, 454 U.S. 516 (1982).

COMMENT:

The limitation on "reversion, reverted interests or use restrictions" applies to possibilities of reverter, rights of reentry (powers of termination) and restrictive covenants whether the limitation, condition or restriction has been breached and whether the purpose is obsolete or still beneficial. The limitation applies against municipal corporations. The limitation applies to minors, the mentally ill and persons entitled to relief under the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. §§501 et seq., as amended. However, §614.24 now provides that it does not apply to a reversionary interest in railroad property if the reversion is caused by the abandonment of the property for railroad purposes after July 1, 1980. (This section would not appear to affect reversionary interests which were cut off by operation of Iowa Code §614.24 prior to July 1, 1980.)

These sections do not apply if the interest owned is an easement rather than a possessory estate subject to a reversion or use restriction.

The Stale Uses and Reversions Act originally did not define the term "use restrictions." In 2014, Iowa Code §614.24 was amended by the addition of new subsection (4) setting forth the definition of the term "use restrictions," as follows:

4. As used in this section "use restrictions" means a limitation or prohibition on the rights of a landowner to make use of the landowner's real estate, including but not limited to limitations or prohibitions on commercial uses, rental use, parking and storage of recreational vehicles and their attachments, ownership of pets, outdoor domestic uses, construction and use of accessory structures, building dimensions and colors, building construction materials, and landscaping. As used in this section, "use restrictions" does not include any of the following:

a. An easement granting a person an affirmative right to use land in the possession of another person including but not limited to an easement for pedestrian or vehicular access, reasonable ingress and egress, solar access, utilities, supporting utilities, parking areas, roadway, bicycle paths, and water flow.

b. An agreement between two or more parcel owners providing for the sharing of costs and other obligations for real estate taxes, insurance premiums, and for maintenance, repair, improvements, services, or other costs related to two or more parcels of real estate regardless of whether the parties to the agreement are owners of individual lots or incorporated or unincorporated lots or have ownership interests in common areas in a horizontal property regime or residential housing development.

c. An agreement between two or more parcel owners for the joint use and maintenance of driveways, party walls, landscaping, fences, wells, roads, common areas, waterways or bodies of water.

TITLE STANDARD 15.3

15.3 PROBLEM:

Rev 12/14

If an instrument affecting real estate is executed by a limited liability company, is it necessary to obtain a showing from its certificate of organization, operating agreement, or a duly authorized company resolution that the individual who executed the instrument was authorized to do so?

STANDARD:

NOTE: There are two standards that follow. Because of substantive Iowa Code amendments that became effective on July 1, 2013, there is a standard applicable to instruments executed on or after July 1, 2013, and a different standard applicable to instruments executed for limited liability companies subject to chapter 489 of the Code of Iowa and prior to July 1, 2013.

FOR INSTRUMENTS EXECUTED ON OR AFTER JULY 1, 2013:

No. However, if the limited liability company's certificate of organization, operating agreement, statement of authority or a duly authorized company resolution are shown in the abstract, the examiner is bound to take notice of any limitations contained in any such documents with respect to the powers of the individual to execute the instrument on behalf of the company.

Authority:

Iowa Code §489.407 (2013)

2013 Iowa Acts (85 G.A.), ch. 108, §2 (amending Iowa Code §489.302)

2013 Iowa Acts (85 G.A.), ch. 108, §4 (to be codified as Iowa Code §489.407A)

2013 Iowa Acts (85 G.A.), ch. 108, §5 (to be codified as Iowa Code §558.72)

FOR INSTRUMENTS EXECUTED PRIOR TO JULY 1, 2013:

Real property acquired by a limited liability company ("LLC") and held in the LLC name may be conveyed only in the LLC name. Any conveyance from an LLC that is managed by its members so made and signed by a majority of the members and containing a recitation that the conveyance is being made in the ordinary course of the LLC's business or affairs shall be presumed to be authorized by the LLC in the absence of knowledge of acts, facts, or restrictions indicating a lack of authority. Any conveyance from an LLC that is managed by managers so made and signed by a majority of the managers and containing a recitation that the conveyance is being made in the ordinary course of the LLC's business or affairs shall be presumed to be authorized by the LLC in the absence of knowledge of acts, facts, or restrictions indicating a lack of authority.

The record must disclose: (1) whether the LLC is member-managed or manager-managed; (2) whether the conveyance is in the ordinary course of LLC's business or affairs; and (3) the authority of the signer to act on behalf of the LLC.

Absent actual or constructive knowledge to the contrary, and unless a properly filed and recorded Statement of Authority contradicts any of the following showings, evidence of the

foregoing matters may be provided of record by one or more of the following: (a) the LLC's written operating agreement; (b) a duly filed and recorded Statement of Authority; (c) an affidavit signed by a person with knowledge; or (d) a recitation contained in the instrument of conveyance (including the acknowledgement of such instrument). Any instrument of conveyance signed by the person or persons (whether members, managers, or officers) so authorized of record shall be presumed to be authorized by the LLC. If the transaction is not in the ordinary course of business, the consent of all members is required.

Authority:

Iowa Code §§489.407(1) and .302 (2013), prior to the enactment of 2013 Iowa Acts (85 G.A.), ch. 108, H.F. 566.

COMMENT:

Iowa Code Chapter 489 (2009) enacts the Revised Uniform Limited Liability Company Act. Before January 1, 2011, and for LLCs that did not adopt the chapter 89 regime, Iowa Code chapter 490A applied, and generally, absent a record to the contrary, the rule presuming apparent authority of either members or managers executing an instrument on behalf of the LLC applied to a transaction appearing to be in the ordinary course of business. Chapter 490A is now repealed. After January 1, 2011, Chapter 489 governs LLCs. Effective on July 1, 2013, a number of provisions of the Iowa Code relating to LLCs were amended, including §§489.302, 489.407, 489.407A, 558.72 and 614.14A. 2013 Iowa Acts (85 G.A.), ch. 108, H.F. 566.

Real property acquired by a limited liability company ("LLC") and held in the LLC name may be conveyed only in the LLC name. An LLC may be either member-managed or manager-managed. An instrument of conveyance on behalf of an LLC is authorized either: (a) as provided in the operating agreement, (b) as provided in a statement of authority filed with the Secretary of State and county recorder, or (c) with consent of all members in a member-managed LLC or consent of a majority of all managers in a manager-managed LLC. 2013 Iowa Acts (85 G.A.), ch. 108, §4 (to be codified as Iowa Code §489.407A).

One of the 2013 amendments was the addition of statutory warranties providing that an instrument of conveyance from an LLC, unless clearly and conspicuously provided to the contrary in the instrument, includes a warranty to the transferee by the person executing the instrument that the person executing the instrument has been duly authorized by the LLC and has the legal capacity to execute the instrument. 2013 Iowa Acts (85 G.A.), ch. 108, §5 (to be codified as Iowa Code §558.72). The title examiner may rely upon the statutory warranties as if such warranties were set forth in writing in the conveyance instrument itself.

2013 Iowa Acts (85 G.A.), ch. 108, §6 (to be codified as Iowa Code §614.14A) provides a statute of limitations barring claims seeking to invalidate a deed or real estate contract by an LLC based on the allegation that the execution of the instrument was not authorized by the LLC. See Title Standard 10.7 and Comment.