

2009 Title Examination Standards Adopted by the Board of Governors on December 3, 2009, effective December 31, 2009.

At the November 10, 2009 meeting of the Real Property Law Section, the Section voted to send the proposed 2009 Title Examination Standards to the Board of Governors for adoption. The Section's Title Standards Committee presented the Section's request for adoption to the Board of Governors at their meeting on December 3, 2009. The Board unanimously approved the Standards with an effective date of December 31, 2009.

The Title Examination Standards were first adopted on February 5, 1954. Subsequent revisions were made and effective on February 9, 1963, January 1, 1974, June 1, 1980, January 1, 1988, January 1, 1990, January 1, 1997, July 15, 2007, December 31, 2008 and most recently on December 31, 2009.

The members of the Section's 2009 Title Standards Committee are:

Chair: Carol Durgy Brooks, Esq., CATIC Title Insurance
James O. Barney, Esq., Sulloway & Hollis, P.L.L.C.
Heidi J. Barrett-Kitchen, Esq., Shaheen & Gordon, PA
Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella, PLLC
Jacqueline Fitzgerald-Boyd, Esq., Fitzgerald-Boyd Law, LLC
Robert R. Howard, III, Esq., Robert Howard Law Office &
Stonebridge Title Company LLC
Connie Boyles Lane, Esq., Orr and Reno, PA
Denis O. Robinson, Esq., Pierce Atwood, LLP
Phillip J. Stiles, Esq., TitlePro, LLC
Carol E. Willoughby, Esq., Bernstein, Shur, Sawyer & Nelson, PA

The Title Standards Committee is a standing Committee of the Real Property Law Section and conducts an annual review of the existing Standards. The Committee meets regularly to review and discuss proposed changes, including suggestions sent directly to the Committee, raised at Section meetings or submitted electronically on the Real Property Listserv. As a result of the 2009 review, the Committee posted a draft of proposed revisions to the 2008 Standards on the Section's Title Standards page of the Bar website and posted notice on the Section's Listserv on September 9, 2009. Section members had the opportunity to submit comments for a 30-day comment period ending on October 9, 2009. The Committee introduced the proposed revisions at the September 8, 2009 Section meeting. The proposed revisions were also discussed at the October 13, 2009 Section meeting. At the November 10, 2009 meeting, Section members voted to approve the proposed draft and requested that it be forwarded to the Board of Governors of the New Hampshire Bar Association. On December 3, 2009, the Board of Governors adopted the Section's recommendation as the 2009 New Hampshire Title Standards, effective December 31, 2009.

The 2009 Title Examination Standards are electronically accessible by Section Members on the Real Property Law Section page of the New Hampshire Bar Association website (www.nhbar.org). Go to the Real Property Law Section Materials page, and then click on the link, "Title Standards," to view the Standards. The 2009 Title Examination Standards are presented online in a "Clean" version and in a "Redline" version (the 2008 version with deletions in redlined strikeouts and additions in blue underlines). The 2009 Standards are also available for public access at www.nhbar.org in the "Legal Links" area with a click on the "NH Practice Guidelines."

A Guide to the Revisions

To view all the revisions, see the "Redline" version posted on the Title Standards Page. Each Standard is assigned a title to make searching and identification of the contents easier. Each Standard is followed by a year or years in brackets. The year or years noted are the year that the Standard was first adopted and the year or years in which it was revised in substance, if any. Any changes in the renumbering of Standards, although shown, have not been considered to warrant a revision date, nor have a few minor typographical errors and corrections. Substantive changes to the 2008 standards are noted with the year "2009" at the end of each revised Standard. Changes in topic heading, minor typographical errors or punctuation are not noted with the date 2009. New standards can be easily spotted as containing only one date: 2009. Copies of the 2009 "Clean" or "Redline" versions can be printed by the viewer if a hard copy is needed.

New changes to the Title Standards can be easily searched online by using "2009" in the search field. The 2009 final clean version of the Standards is posted online along with the 2008 redlined version, for ease of reference in identifying the 2009 changes.

The Bar Association website makes the 2009 Standards available to members at no charge.

Highlights of Revisions

The 2009 Title Standards amend the 2008 Standards in a number of ways. Changes in statutes, case law and real estate practice have been noted. See, e.g., homestead and civil unions 5-4, 5-6 and 5-7 and civil union status 5-51, 6-1 and 6-2. Many standards have had case law or statutory annotations added. See, e.g., joint tenancy 5-13 and 5-14; trusts 5-16, 5-17, 5-18, 5-19, 5-20; current use 9-32 and hazardous and dilapidated building lien 9-39.

During the review and comment process, the Title Standards Committee addressed the proposed revisions to Standards 5-16 through 5-20 on trusts, questioning the need and/or propriety of a number of the revisions.

The revisions fell into two categories. The first had to do with the changes to Standards 5-18 and 5-19. The reason for these changes is that the Legislature recently enacted new section RSA

477:25-a, validating deeds of record to and from a named trust which would otherwise be ineffective to transfer title. Since this statute became effective on September 11, 2009, the Committee recommended and the Section approved that Standards 5-18 and 5-19 be revised to reference and conform to the new law.

The other category of revisions had to do with the changes to Standards 5-16, 5-17, and 5-20 eliminating the requirement that a trustee's certificate or equivalent evidence be placed on record to validate any conveyance out of a trust. A concern arose whether any conveyancer involved in a current transaction should still require a trustee's certificate or equivalent evidence. The Committee noted that under RSA 564-A:7 the recording of the prescribed certificate creates a conclusive presumption relative to trustee authority. However, the Committee also noted that while conveyancers now still often require certificates of existence and secretary's certificates regarding authority, capacity, and incumbency in current transactions involving corporate conveyances, they usually do not place such certificates on record, and most title examiners will accept past recorded corporate deeds without such supporting evidence being of record. These practices have been approved for some years in the Title Standards for corporate transactions -- namely, Standards 8-2 through 8-4, and the Comment following them.

The Title Standards reflect the real estate standard of practice when dealing with an established title in the registry of deeds. The Standards are not intended to be a "how to" guide on conducting a current transaction. See Standard 1-1: "Purpose. The objective of the title examiner is to determine whether or not the title in question is satisfactory of record"

The Committee recommended that there is no principled reason for distinguishing between corporations (and other legal entities covered by those same standards) and trusts in this regard, and recommended the revisions to Standards 5-16, 5-17, and 5-20 that parallel Standards 8-2 through 8-4 in (a) suggesting that the conveyancer in a current transaction should still require a trustee's certificate and/or other evidence as necessary to confirm that a trust is in existence at the time of a conveyance and that the named trustees do in fact hold those offices and are authorized to make the conveyance; but (b) providing that a past trust conveyance on record may be accepted by a title examiner as presumptively valid without one or more certificates having been recorded with it, absent evidence to the contrary.

New Standard

New standards are added to identify new laws, cases or practice standards. A new 2009 standard deals with:

— unincorporated associations and RSA 292:14 (8-7);

Features

The 2009 Title Examination Standards contain a revised Table of Contents and revised Index. The Standards are also electronically searchable. New standards can be easily searched online by using "2008" in the search field. All past versions of the Standards (1954, 1963, 1974, 1980, 1988, 1990, 2007 and 2008) are also posted online and searchable as well. Due to the online search capability, the 2007, 2008

and 2009 Standards discontinue the use of the 1997 printed chart of changes, since the redlined text shows deletions and additions, and all prior standards are available online. The 2008 “Redline” version will remain online for ease of tracking the 2008 to 2009 changes, and for reference.

Annual Title Examination Standards Review Process

As statutory and case law changes, subsequent reviews and revisions to the Standards are addressed annually using the discussions at Section meetings and on the ListServ as an online capability of the Real Property Law Section Materials page of the Bar website. In 1988, the Section created the Title Standards Committee as a standing committee to address revisions on a yearly basis; the annual review process was reinstated in 2008. Suggestions for 2010 revisions may be posted on the Real Property Law Section Listserv with the Subject line: “2010 Title Standards Suggestions.” The Committee monitors issues arising on the Listserv; at Section meetings or brought to its attention by individual Section members. The goal of the Committee’s annual review is to provide the Section each year with proposed revisions in September on the ListServ and at the September Section meeting; opportunity for discussion and comment during a 30-day Comment Period ending in early October; further discussion, if needed, at the October meeting and Section vote at the November Section meeting. The Section’s recommendations once approved would be recommended to the Board of Governors for adoption at their next meeting in November or December with the adopted Standards effective as of December 31st.

April 2010 CLE

On April 7, 2010, the 2009 Title Standards Committee will present a morning panel discussion of Title Standards featuring the 2009 Title Examination Standards. The NH Bar and its Real Property Law Section will jointly sponsor the seminar at the Bar Center from 9 a.m. to 11:15 a.m.