NEW HAMPSHIRE BAR ASSOCIATION TITLE EXAMINATION STANDARDS

This document is the product of the New Hampshire Bar Association's Real Property Law Section and represents the thirteenth revision of New Hampshire Bar Association Title Examination Standards, first published in 1954.

Adopted by the New Hampshire Bar Association Board of Governors

On November 21, 2013

Effective December 31, 2013

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Acknowledgment

The Real Property Law Section authorizes the Title Standards Committee to review and revise the New Hampshire Title Standards on an annual basis. The Committee meets regularly to review and discuss proposed changes, including suggestions raised by Section members individually, in discussions at Section meetings, and in online discussions on the Real Property listserve. On September 4, 2013, the Committee posted a draft of the proposed 2013 revisions to the Title Examination Standards on the listserve, and also presented the draft at the September Section meeting. Section members were invited to submit comments to the Committee during a 30-day comment period. The final proposed draft was posted on the listserve. At the November 12, 2013, meeting, Section members approved the draft with adopted comments and requested that the proposed 2013 Title Standards be forwarded to the Board of Governors of the New Hampshire Bar Association. On November 21, 2013, the Board of Governors adopted the Section's recommendation as the 2013 New Hampshire Title Examination Standards, to be effective December 31, 2013.

On behalf of the members of the Real Property Law Section, I would like to thank the Title Standards Committee for the many hours devoted to the 2013 revision project.

The members of the 2013 Real Property Title Standards Committee are:

Carol Durgy Brooks, Esq., Chair
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., Howard & Urbaitus PLLC & Stonebridge Title Company LLC
Scott D. Kumpf, Esq., Signature Escrow and Title Services, LLC, Portsmouth, NH
Connie Boyles Lane, Esq., Orr & Reno, PA
Denis O. Robinson, Esq., Pierce Atwood, LLP
Phillip J. Stiles, Esq., Attorney at Law, Rochester, NH
Carol E. Willoughby, Esq., First American Title Insurance Co.

December 11, 2013

John F. Weaver, Esq., Chair
Real Property Law Section

Overview of the 2013 New Hampshire Title Standards

The 2013 revisions to the Title Examination Standards address changes in attorney practice, statutory and case law. Several features are included. The Standards are electronically available online at the Real Property Law Section Materials page/Title Standards page of the New Hampshire Bar Association website: www.nhbar.org. Copies of the 2013 "Clean" version can be printed by the viewer if a hard copy is needed. The 2013 modifications and revisions to the previous Standards of 2012 can also be viewed on the website as a "Redline" version of changes. Deletions are shown as strikethroughs and additions are underlined.

In the 2013 edition, each new Standard is assigned a title to make searching and identification of the contents easier. Any substantive changes are noted with the year "2013" at the end of the Standard. New changes can be easily searched online by using "2013" in the search field. A revised table of contents and topical index are also provided to aid the paper copy searcher. Due to the online search capability, the 2013 Standards do not use a printed chart of changes, since the redline text shows deletions and additions to the 2012 Standards. The 2013 clean version of the Standards is posted online along with the redlined version, for ease of reference in identifying the 2013 changes.

In addition to the online availability of the 2013 Title Standards, all of the previous versions of the Title Standards – 1954, 1963, 1974, 1980, 1988, 1990, 1997, 2007, 2008, 2009, 2010, 2011, and 2012 – are available and searchable on the Real Property Law Section Materials page/Title Standards page of the New Hampshire Bar Association website. The Bar Association website affords us the opportunity to provide access to all prior versions.

The 2013 Title Examination Standards amend the 2012 Standards in a number of ways. Changes in statutes, case law and real estate practice have been noted. See, e.g., Recording in 1-4 and the new Note with a reference to a recent case; clarification of language in Standards 7-7 "Foreign Bequest" and 7-8 "Sale by Foreign Executor"; revision to Standard 9-29 to clarify that redemption should be via a release or deed by the creditor or purchaser to the debtor and be duly recorded.

A new standard is added to identify new laws, cases or practice standards. The new 2013 standard, 7-25, "Sale by Foreign Guardian or Conservator," references RSA 464-A:44 and addresses the need for a foreign guardian or conservator to file a petition or copy of the foreign appointment with the probate division of the circuit court in New Hampshire prior to selling property of the ward located in New Hampshire in the same manner as a resident guardian or conservator.

As statutory or case law changes, subsequent reviews and revisions of the Standards are now made annually on an as-needed basis using the online capability of the Real Property Law Section Materials page of the Bar website. As determined by the Section

in the 1988 Standards Acknowledgment, the Title Standards Committee remains a working committee to address future amendments on a yearly basis.

The Title Standards Committee expresses its appreciation to the Sulloway & Hollis firm for their expertise in formatting the electronic Standards, to Patty Frechette and Karrie Fessette for their efforts in creating the Title Standards page and posting the 2013 Standards, and to the Bar Association Board of Governors for making these Title Standards available to members at no charge. My deep appreciation and thanks go to the Committee for their many hours of research, discussion and collaboration.

December 11, 2013

Carol D. Brooks, Esq.,
Chair
Title Standards Committee
Real Property Law Section

New Hampshire Title Standards
Adoption and Revision Dates

The Title Examination Standards were first adopted on February 5, 1954. Subsequent revisions were made effective February 9, 1963, January 1, 1974, June 26, 1980, January 1, 1988, January 1, 1990, January 1, 1997, July 15, 2007, and December 31 of 2008, 2009, 2010, 2011, 2012, and most recently, 2013.

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. However, all of the 2013 changes to the 2012 Standards can be viewed on the Real Property Law Section Materials page/Title Standards page of the Bar website (www.nhbar.org) as the "2013 NH Title Examination Standards – Redline version," in addition to the "2013 NH Title Examination Standards – Clean version."

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ARTICLE I. PURPOSE OF EXAMINATION AND PLACES OF SEARCH

1-1. Purpose. The objective of the title examiner is to determine whether or not the title in question is satisfactory of record. Objections to title should be made only when the defect or defects could reasonably be expected to expose the prospective owner, tenant, or lienor to adverse claims. The following Title Standards express the practice considered reasonable by the New Hampshire Bar Association.

Comment: Title standards are primarily intended to eliminate technical objections which do not impair marketability and some common objections which are based on misapprehension of the law. The examining attorney, by way of a test, may ask, after examining the title, what defects and irregularities have been discovered, and as to each such irregularity or defect who, if anyone, can take advantage of it as against the purported owner, and to what end. (Adapted from the Model Title Standards, Simes and Taylor, University of Michigan Law School, 1960)

On marketable title, see Buxton v. Glennon, 122 N.H. 674 (1982); Belrose v. Baker, 121 N.H. 48 (1981); North Bay Council, et al v. Bruckner, 131 N.H. 538 (1989); McManus v. Rosewood Realty Trust, 143 N.H. 78 (1998).

[1980, 1988, 2007]

1-2. Prior Examination. When an examiner discovers a situation which the examiner believes renders a title defective, and the examiner has notice that the same title has been examined by another examiner who has passed the defect, it is recommended that the examiner communicate with the previous examiner, explaining the objection and affording the opportunity for discussion, explanation, and correction.

[1988]

1-3. Places of Search. A standard search includes a search of the records of the Registry of Deeds, either in person or through the official registry website, and Registry of Probate in the county where the property is located. Search of records of other registries of probate, federal courts, including bankruptcy court, New Hampshire Superior and District Courts, or places where UCC filings are made is not necessary unless other records or information indicate a search of such records is necessary. However, a title is not marketable which requires examination of matters of record outside of this state when action could be taken in this state to make the title marketable as a matter of record. See Paradis v. Bancroft, 97 N.H. 477 (1952). A title examiner may rely on the records posted on the official registry websites through the date for which index records are available. See Standard 1-4.

[1988, 1990, 2007, 2011]

1-4. Recording. Every deed or other conveyance of real estate and every court order or other instrument affecting title to any interest in real estate shall be recorded in the Registry of Deeds for the county or counties in which the real estate is located, and such instruments shall not be effective as against bona fide purchasers for value until such recording occurs. The foregoing does not apply to probate records and initial property

tax liens, which are exempt by law from recording. RSA 477:3-a. See Standards 1-3, Comment to 5-6 (re divorce decrees) and 10-1 (re plans).

Note: For a discussion of what constitutes a document in the chain of title which provides notice to third parties, see C F Investments, Inc. v. Option One Mortgage Corp., 163 N.H. 313, 317-319 (2012).

[2007, 2008, 2011, 2012, 2013]

ARTICLE II. PERIOD OF TITLE SEARCH

2-1. Full Title. For any period of search, instruments in the chain of title must show reasonable probability of full title with no suggestion of substantive defects or matters that may warrant additional search or inquiry. See also Standard 1-3.

[1988, 2010]

2-2. 35-Year Search. A title examination shall cover a minimum period of thirty-five (35) years, commencing with a deed with warranty covenants.

[1980]

2-3. 50-Year Search. In the absence of Standard 2-2, a title examination may cover a minimum period of fifty (50) years, commencing with:

(a) A deed or deeds with statutory quitclaim covenants which, alone or with other deeds, purport(s) to convey the entire fee; or

(b) A mortgage deed if subsequently properly foreclosed; or

(c) A fiduciary deed given under proper authority or by a personal representative, conservator, or trustee, which purports to convey the entire fee.

[1988]

2-4. 85-Year Search. In the absence of Standards 2-2 or 2-3, a title examination may cover a minimum period of eighty-five (85) years, commencing with a probate proceeding in which the property is reasonably identifiable.

[1988]

ARTICLE III. AFFIDAVITS AND RECITALS

3-1. In General. Reliance upon affidavits and factual recitals in conveyances or other recorded instruments is acceptable practice in the absence of notice of contrary information.

[1980, 1988, 2007]

3-2. Whose Affidavits or Recitals Acceptable. Affidavits or recitals should state facts, rather than conclusions, and disclose the basis of the maker's knowledge; but failure to meet one or both of these criteria does not preclude reliance in the absence of contrary information. The value of an affidavit or recital is not necessarily diminished by the fact that the maker is interested in the title or the subject matter of the affidavit or recital.

[1980, 1988]

ARTICLE IV. NAMES

4-1. ***Idem Sonans*.** The doctrine of *idem sonans* (namely, that if two names, as commonly pronounced in the English language, are sounded alike, a variance in their spelling is immaterial; and even a slight difference in their pronunciation is unimportant if the attentive ear finds difficulty in distinguishing between the two names when pronounced, and although spelled differently, they may be regarded as the same) should be applied broadly, and the fact of identity of the party presumed in spite of variations in the spelling of the same. However, this doctrine may not render a recorded attachment (or possibly any other recorded document) effective against a bona fide purchaser for value and without actual notice where there is even a slight variation in spelling. See Brady v. Mullen, 139 N.H. 67 (1994).

[1954, 1980, 2007]

4-2. Middle Name or Initial. No proof of identity is required where there is a variance in names resulting from the fact that in one instrument an individual is designated only by a given name and the surname, and in another by the same given name and surname with the addition of a middle name or initial.

[1954, 2007]

4-3. Given Name Abbreviated. Where there is a variance in names resulting from the fact that the given name of a party is shown in full in one instrument, while in another such given name is abbreviated, the examiner should rely on all customary and usually recognized abbreviations and derivations of given names.

[1954]

4-4. Surname Changed – Recital Sufficient. Where a person's surname is changed, such as through marriage, divorce, or probate proceeding, after he or she has acquired title, and the person then conveys in the former name with new surname added (i.e., Mary Smith is recited as Mary Smith Brown), such a recital is sufficient. The better practice is "Mary Smith Brown, formerly Mary Smith." If the person's new name does not include the old one, a recitation such as "Mary Brown, formerly Mary Smith" is sufficient.

[1954, 1988]

4-5. Surname Changed – Recital Required. Where title is taken under the name of Mary Jones and deeded by her under the name of Mary Smith, the title is unsatisfactory unless further factual explanation appears of record in New Hampshire. See Paradis v. Bancroft, 97 N.H. 477 (1952).

[1954]

4-6. Given Name Corrected – Recital Sufficient. If the given name of a grantee is changed in a subsequent instrument from the original grantor expressly purporting to correct an error in the given name in the original instrument, in the absence of special circumstances creating suspicion, such a recital should be relied upon without additional proof.

[1954]

4-7. Name Changed in Signature. Where the given name or names, or the initials, as used in the grantor's signature on a deed, vary from the name as it appears in the body of the deed, but the name as given in the acknowledgment agrees with either the signature or the body of the deed, the certificate of acknowledgment may be accepted without further identification.

[1954]

4-8. Surname – Indexing. Where there could be reasonable uncertainty as to which is the surname of an individual named in an instrument, an examiner may assume the instrument is properly indexed if it is indexed under any component of the name that could reasonably be considered to be the surname.

[2007]

4-9. Business Name – When Explanation Required. Where there is slight variation in a business name, such as the omission in one instrument and the inclusion in a later one of the word, "The," it is proper to require an affidavit of identity. It is a matter of common knowledge that some business entities have been organized as successors to other entities with a very slight variance in the name.

[1954, 2007]

4-10. Business Name – Indexing. Where the name of an entity appears to begin with the given name or initial(s) of an individual, followed by a surname, an examiner may assume the instrument is properly indexed if it is indexed under either the first name or initial(s) or the surname.

[2007]

4-11. Business Name – Location as Part of Name. Since it is common knowledge that the name of the place where a business entity is located is sometimes an actual part of its business name and sometimes not, it is proper to require an affidavit of identity where the name of the town is omitted from an instrument and included in a later instrument, or vice versa.

[1954, 2007]

4-12. Business Name – Common Abbreviations. Commonly recognized abbreviations in corporate names and in names of other organizations, such as "Co." for Company, "Corp." for Corporation, "Inc." for Incorporated, or "Assn." for Association, may be accepted by the examiner.

[1974]

4-13. Business Name – State of Formation. A deed or other instrument to or from a corporation, general or limited partnership, or limited liability company should recite the name of the state of incorporation or formation; however, absence of such a recital is not a defect if the state of incorporation or formation appears on the records of the New Hampshire Secretary of State, or if the same named entity has consecutively received and conveyed title to the locus. [1974, 1988]

4-14. Business Name – Corporate Seal. A corporate seal reflecting a state of incorporation on a deed from a corporation may be relied upon.

[1974, 1988]

4-15. Trust Name. Since a trust is not an entity, but refers to the agreement under which the trustee(s) hold(s) title, a minor variation in the name of a trust may be accepted without further explanation if successive instruments naming the trust deal with the same property (e.g., deeds into and out of a trustee of a trust). See Standards 5-16, 5-18 and 5-19.

[2008]

ARTICLE V. DEEDS AND POWERS OF ATTORNEY

5-1. Dower and Curtesy. A witness or acknowledgment to the signature of the spouse of the grantor in releasing dower or curtesy is not required.

Estates of dower and curtesy were abolished as of midnight on August 10, 1971. Laws 1971, Ch. 179, revised by 1971 Laws, 473:3. See RSA 560:3.

> Exception 1. Rights of widows with choate rights of dower vested prior to that moment (i.e., widows whose husbands died before that moment). Laws 1971, 179:11.
>
> Exception 2. Prior to midnight, August 10, 1971, curtesy initiate vests in the husband upon birth by his wife of a child capable of inheriting, though the wife may still be living.

[1954, 1974, 1988, 2007]

5-2. Homestead Release. Effective release of homestead requires the same formalities as for the conveyance of real estate. Pursuant to Standard 3-1, if the homestead right does not exist in any person, a recitation such as "the premises conveyed hereby are not homestead property" is acceptable as a statement that the homestead right does not exist. The homestead right is lost by abandonment. See RSA 480.

If not satisfactorily released, the homestead right is abandoned either upon death of the spouse who could claim such right, or upon departure of the spouse from the property with no intent to return. This may be demonstrated by a death certificate or an affidavit setting forth satisfactory evidence of such departure and intent.

The homestead right may be presumed abandoned by the passage of twenty years from the date of conveyance, or the recording of an affidavit, showing facts, i.e., vacant land, indicating abandonment.

See In re Schalebaum, 273 B.R. 1 (Bankr. D.N.H. 2001), in which the homestead exemption was extinguished by conveyance of the premises and the debtor's removal from the premises; Stewart v. Bader, 154 N.H. 75 (2006). See also Standard 5-51.

[1954, 1974, 1988, 2007, 2008]

5-3. Homestead – Spousal Relationship. The mere signing of a deed by a spouse without any specific grant in the instrument may release the spouse's marital interests. See Perley v. Woodbury, 76 N.H. 23 (1911).

It may be presumed from the description of the parties as husband and wife in a prior and subsequent instrument that they were married to each other at the time of the conveyance in question, in the absence of evidence to the contrary. See Standard 5-51.

[1954, 1988, 2007, 2008]

5-4. Homestead – Statement of Marital *or Civil Union Status*. If a husband and wife join throughout as grantors in a deed, dower, curtesy and homestead are released, even though there is no specific release of such interests.

No separate release of homestead is required to release the homestead of a grantor described as unmarried or single *prior to January 1, 2008, or as single after that date*.

Failure to recite marital *or civil union* status by itself is not a defect, but may raise factual issues of homestead. See Standard 5-7. (Italicized words applicable only from 2008 through 2010 – see Standard 5-51.)

[1954, 1988, 2007, 2008, 2009]

5-5. Homestead Release and Revocable Trusts. Effective January 1, 1998, a deed to one or more trustees of a named revocable trust or a trust that provides notice that its terms are revocable does not release homestead rights of the grantors, unless the deed contains an express release of homestead rights by the grantors and their spouses. A subsequent deed or mortgage from one or more trustees of a revocable trust should also be executed by the grantors/settlors and their spouses releasing their individual homestead rights. See RSA 480:9. See also Standard 5-51.

[2007, 2008]

5-6. Homestead – Divorce. Where a deed is executed pursuant to a divorce decree, the preferable practice is to cite the court order of divorce and include either a recitation that the grantor is *unmarried or* single or, if such is not the case, recitations of other facts relevant to the issue of homestead rights. (Italicized words not applicable from 2008 through 2010 – see Standard 5-51.)

Comment: The divorce decree itself need not be recorded unless it purports to effectuate a transfer of the real property without the necessity of a separate deed. In such case, in order to protect the privacy of the participants to the divorce, a separate divorce decree that addresses only the real property determination may be requested and recorded. See Standard 1-4 and RSA 477:3-a.

[1980, 1997, 2007, 2008, 2009]

5-7. Homestead – Marital *and Civil Union* Status Not Recited. With regard to homestead interests, title conveyed by a deed that does not state the marital *or civil union* status of all of the grantors will not normally be marketable unless the deed states that the property is not homestead property or the deed itself or other documents on record (possibly including a newly recorded affidavit) establish that each grantor is in fact either single or joined in marriage *or civil union* to another grantor, or that the property is not the residence of any grantor's spouse *or civil union partner* who is not also a grantor. See Article III and Standard 5-4. (Italicized words applicable only from 2008 through 2010 – see Standard 5-51.)

[1954, 1980, 2007, 2008, 2009]

5-8. Uniform Law of Notarial Acts - Notary. A written acknowledgment or jurat by a notary in New Hampshire should normally include the official seal or legible imprint of an official rubber stamp stating the name of the notary, the words "notary public, New Hampshire" and a statement of the expiration date of the notary's commission. RSA 456-B:3 (2006).

[2007]

5-9. Uniform Law of Notarial Acts - Justice of the Peace/ Commissioner of Deeds. For a written acknowledgment or jurat by a justice of the peace in New Hampshire or by a commissioner of deeds in or outside New Hampshire, a signature, printed name of the justice/commissioner, and commission expiration date, typed, printed or stamped, shall be sufficient.

[2007]

5-10. Uniform Law of Notarial Acts – Outside New Hampshire. Notarial acts performed in other jurisdictions of the United States are subject to RSA 456-B:4. Notarial acts performed under federal authority are subject to RSA 456-B:5. Foreign notarial acts are subject to 456-B:6. The Uniform Law of Notarial Acts, effective January 1, 2006, repealed RSA 456-A (The Uniform Recognition of Acknowledgments Act) and RSA 456 (Uniform Acknowledgment Act).

[2007]

5-11. Uniform Law of Notarial Acts – Form of Acknowledgment. As of January 1, 2006, the Uniform Law of Notarial Acts sets forth the requirements for notaries public, justices of the peace and commissioners of deeds. RSA 456-B contains new short form acknowledgments. Prior forms of acknowledgment that conform to the requirements of RSA 456-B:7, I and II, are sufficient.

[2007]

5-12. Acknowledgments Taken Outside of New Hampshire. Full faith and credit is given to a document properly executed and acknowledged in another state in compliance with the laws of that state.

[1954, 1988, 1990, 2007]

5-13. Joint Tenancy. A deed by "A" to "A" and "B" as joint tenants, or joint tenants with rights of survivorship, will create a joint tenancy. See RSA 477:18. Joint tenancy is not automatically severed by divorce. A specific divorce decree provision must address and sever the joint tenancy rights of the parties. See Estate of Croteau v. Croteau, 143 N.H. 177 (1998). A recorded deed from a joint tenant to himself or herself expressing the intent to sever the joint tenancy is effective to do so as to that grantor. See Estate of Croteau; Therrien v. Therrien, 94 N.H. 66 (1946).

[1954, 2007, 2009]

5-14. Conveyance by a Surviving Joint Tenant. Where a title is acquired through survivorship of a joint tenant under a valid joint tenancy, the following showing may be required before approving a conveyance from the survivor:

(a) any customary proof of record showing the death of the deceased joint tenant;

(b) a showing of nonliability for New Hampshire inheritance (Legacy and Succession) taxes for deaths occurring prior to January 1, 2003, or expiration of the lien for such taxes. See Standard 9-3;

(c) a showing of nonliability for federal estate or gift taxes or of expiration of the lien for such taxes. See Standards 9-5 and 9-6;

(d) a showing that the joint tenancy, if between husband and wife, has not been severed by the terms of a divorce decree or by operation of law, or by an instrument recorded by either joint tenant (including a deed from the joint tenant to himself or herself) prior to the death of the deceased joint tenant expressly declaring an intent to sever the joint tenancy. See Standard 5-13.

[1954, 1974, 2007, 2009]

5-15. Deed Naming Some, but Not All Cotenants. Where the title is in two or more cotenants, and one or more but not all of the cotenants are recited as grantor, the instrument does not pass title of all parties even though all sign and the deed recites that all are releasing "all interests." It is generally held that if a deed is signed by two persons or more and only one is named as grantor, the conveyance is effective to convey the interests of the named grantor only, even though all sign to execute the deed or release homestead.

[1954, 1988, 2007]

5-16. Notice of Existence of a Trustee and Trust. Where a deed describes the grantee as trustee without disclosing on its face either the nature of the trust or the name of the beneficiary, even though such designation of the grantee as trustee does not necessarily create a trust, it is the general rule that the use of the bare word "trustee" or "as trustee" following the name of the grantee in the deed is sufficient to charge with notice all persons dealing with the grantee concerning the land, and to place them on reasonable inquiry as to the existence and nature of whatever trust there may be.

[1954, 1974, 1988, 2007, 2008, 2009]

5-17. Trust and Trustee – Existence and Authority Presumed. Where an instrument in the chain of title refers to a party as a trust or trustee, the examiner may assume, in the absence of notice of contrary information, that the trust was legally in existence at the time the instrument took effect and was authorized or not prohibited by its terms to participate in the transaction, that the individuals or entities described as trustees validly held such office and were properly authorized to participate in the transaction on behalf of the trust, and that the instrument was effective as to the trust and title to the real property involved. See Simes & Taylor, Model Title Standards.

Comment: The purpose of this standard is to indicate what minimal record evidence of existence, capacity and authority in regard to a past conveyance may be subsequently accepted and relied on by a title examiner, in the absence of notice of conflicting or inconsistent information, as having passed marketable title. In dealing with a concurrent transaction, it may be prudent to require more evidence of existence, capacity and authority, in the form of, e.g., copies of the trust declaration and any amendments, consents of beneficiaries, resignations and appointments of trustees, affidavits of persons with knowledge, or a trustee's certificate complying with RSA 564-A:7, II or III, or RSA 564-B:10-1013, as appropriate; however, under this standard it is not necessary to place such further documentation on record. See Standards 8-2 through 8-4 for similar provisions applicable to corporations and other entities.

[1988, 1997, 2007, 2009]

5-18. Conveyance to a Named Trustee of a Trust. Title to property to be held in trust should be conveyed to a named trustee as the trustee of the trust, and conveyed out by the then trustee or successor trustee. A trust is not an entity but an agreement creating a fiduciary relationship between a grantor/settlor and a named trustee. The wording in a number of trust statutes indicates that title to trust assets is held in the trustee, not in the trust. See, e.g., RSA 477:25; RSA 564:1 and 11; RSA 564-A:7, II; RSA 564-B:4-401, 7-701, 8-816, and 10-1010; and Bastianelli v. Toco International, 117 N.H. 549 (1977). See also Standard 4-15.

[1988, 2007, 2008, 2009]

5-19. Conveyances to Trusts, Not Trustees. Notwithstanding Standard 5-18, a conveyance to or from a named trust may be presumed valid in the absence of contrary evidence. However, such a deed recorded subsequent to January 1, 1988, may be subject to a claim of unmarketability until September 11, 2011. See RSA 477:25-a (effective September 11, 2009).

[1988, 2007, 2008, 2009]

5-20. Trustee's Certificate. A person dealing directly with a trustee of a trust may require an executed and recordable trustee's certificate. However, in the absence of notice of information contrary to or inconsistent with the assumptions listed in Standard 5-17 above, a recorded trustee's certificate is not necessary for a trustee of a trust to pass marketable title. See RSA 564-A:7, II and III; Uniform Trust Code, RSA 564-B:10-1013; and Standard 5-17.

Comment: As provided in Standard 5-17, in the absence of notice of contrary information a title examiner may assume from a recorded deed executed by a trustee that at the time of execution the trust was in existence and that the trustee held that office and was authorized to execute the deed. In such case no trustee's certificate or other evidence of record is necessary for title to be marketable. This parallels Standards 8-2 through 8-4 with respect to deeds executed by corporations or other entities. However, if the title examiner is passing on title resulting from a concurrent transaction, and so is dealing directly with the trustee, it is proper, though not generally necessary, to require a trustee's certificate under RSA 564-A or RSA 564-B, whichever is applicable, and thus

obtain the benefit of the statutory presumptions of validity accompanying those certificates. RSA 564-A:7, which is applicable only to trusts that allow for general trust administration (see definition in RSA 564-A:1), provides that a trustee's certificate in the prescribed form creates a conclusive presumption as to the authority and power of the trustee to make the conveyance. RSA 564-B:10-1013, which is applicable to all express trusts (these include all trusts except constructive trusts and resulting trusts – see RSA 564-B:1-102 and the Official Uniform Trust Code Comment to that section), provides that a trustee's certificate containing the required information may be relied on by the grantee in enforcing the transaction.

[1988, 2007, 2009]

5-21. Death of Grantor of Trust and Subsequent Conveyance by Trustee. Where title is conveyed by a successor trustee of a revocable trust, consideration should be given to whether the grantor of the trust may have died and, if so, whether any Federal Estate Tax is due. See Standard 7-17.

[2007]

5-22. Tenancy by the Entirety. A dispute may exist as to whether a tenancy by the entirety created prior to November 13, 1959 (effective date of Laws 1959, 264:2, amending RSA 477:18) should be treated as a tenancy in common or a joint tenancy; however, current practice is to accept tenancies by the entirety as joint tenancies. See In re Allaire Estate, 103 N.H. 318 (1961); Estate of Croteau v. Croteau, 143 N.H. 177 (1998).

Comment: Tenancy by the entirety as a form of ownership was abolished in New Hampshire in 1860. See Laws 1860, 183; Clark v. Clark, 56 N.H. 105, 109 (1875); see generally 7 C. DeGrandpre, New Hampshire Practice, Wills, Trusts and Gifts §22.03 [2] at 305 (4th ed. 2003). New Hampshire addresses the purpose of the tenancy by the entirety form of ownership through the use of the homestead exemption. RSA 480:1.

[1963, 1974, 1988, 2007]

5-23. Instrument on Record for Ten Years or More. An instrument which has been properly recorded for ten years is not invalid because it omitted to state any consideration, or was not sealed, or witnessed, or acknowledged; but this does not affect the rights of other grantees or lienors of the grantor acquired during the period. See RSA 477:16. As to consideration and seals, effective May 12, 1949. As to witnesses, effective July 9, 1963. As to acknowledgments, effective May 7, 1967. As to abolishment of the requirements for seals and witnesses, see amendments to RSA 477:3 (as to seals, Laws 1977, 366:3, effective August 30, 1977, and as to witnesses, Laws 1981, 303:1, effective August 15, 1981).

Comment: Under modern standards of practice the absence of a statement of consideration does not invalidate a deed even within the stipulated ten-year period. See Comment to Standard 5-55.

[1974, 1980, 1988, 2012]

5-24. Conveyance of a Subdivided Lot. In a municipality that had adopted subdivision regulations, conveyances of lots from an unapproved subdivision between July 27, 1969 and July 3, 1970, are void. RSA 36:37. Laws 1969, 185:1 and 1970, 21:1. See Article X (Plans).

[1980, 1988. 2007]

5-25. Corrective Instruments. A grantor who has conveyed by an effective, unambiguous instrument cannot, by executing another instrument, make a substantial change in the name of the grantee, decrease the size of the premises or the extent of the estate granted, impose a condition or limitation upon the interest granted, or otherwise derogate from the first grant, even though the latter instrument purports to correct or modify the former. But see Standard 4-6.

Corrective instruments should reference the error they purport to correct.

[1988, 2007]

5-26. Partnership Deeds. A conveyance executed by any general partner on behalf of a New Hampshire general or limited partnership shall be presumed valid in the absence of contrary information. RSA 304-A:10; RSA 304-B:24. Prior to January 1, 1988, any conveyance of property owned by a New Hampshire limited partnership was required to be executed by all the general partners. See former RSA 305:10-a. General partnership property may be held in the name of the partnership, or in the names of one or more of the partners of the partnership. RSA 304-A:8, III and RSA 304-A:10. Property acquired in the name of the general partnership may only be conveyed in the name of the partnership. RSA 304-A:8, III.

[1988, 1997, 2010]

5-27. Limited Liability Company Deeds. A recorded conveyance from an LLC shall be presumed valid in the absence of contrary information if executed by a member, manager, officer or other authorized agent of the LLC. RSA 304-C:26, I. But see 304-C:26, III. See Article VIII.

[2007]

5-28. Timber Rights – Period of Effectiveness. Prior to August 29, 1969, a grant of timber rights that does not include either a specific termination date or a reserved right of reverter to the grantor, is not terminated by failure to institute suit pursuant to RSA 477:35-b and must be otherwise extinguished of record.

[1988]

5-29. Timber Rights – Termination Date. After August 16, 2003, absence of a termination date results in forfeiture after seven years. See RSA 477:35-a, II.

[2007]

5-30. Timber Rights – Notice of Intent to Cut. There is an inchoate lien for timber yield tax upon the signing of a "Notice of Intent to Cut" by the town. See RSA 79:10, I(c); RSA 485-A:17; and Article IX (Liens). [2007]

5-31. Boundary Line Agreement. Where the title to two abutting properties is not in dispute, but the common boundary line cannot be determined on the ground due to loss or obliteration of monuments, a boundary line agreement is appropriate. A boundary line agreement confirming the location of that common boundary must be signed and acknowledged and comply with all requirements of RSA 472. The common boundary line must be surveyed and suitable permanent monuments placed at each end and angle as required by RSA 472:4. See New Hampshire Dept. of Resources and Economic Development v. Dow, 148 N.H. 60 (2002).

[1990, 2007]

5-32. FDIC and RTC. For deeds given by the Federal Deposit Insurance Corporation or Resolution Trust Corporation as receiver or conservator of failed depository institutions, see Standards 12-1 and 12-2.

[1997, 2007]

5-33. Manufactured Housing – As Real Property With Permanent Siting. Any manufactured housing conveyed after August 17, 1983, the effective date of RSA 477:44, must be conveyed by deed if located permanently on a site and connected to utilities. If the manufactured housing is to be permanently located on the land of another, consent of the landowner must be obtained.

[1997, 2007]

5-34. Manufactured Housing – Relocation. If manufactured housing is relocated to another county, a certified copy of the deed should be recorded in the new county.

[1997]

5-35. Manufactured Housing – Conveyancing Instrument. The conveyance of a parcel of land and manufactured housing in a single instrument is acceptable if the deed contains a full description of the manufactured housing in order to establish a separate chain of title. Once the manufactured housing of the owner is permanently affixed to the land of the same owner, a conveyance of land with improvements is sufficient to convey the manufactured housing unit with applicable deed reference, but without further description. See RSA 477:44 and RSA 674:31.

[1997, 2007, 2011]

5-36. Manufactured Housing – Real Estate Transfer Tax. Manufactured housing is subject to the real estate transfer tax. An exception to the transfer tax is made for the initial sale out of the dealer. RSA 78-B:1, IV.

[1997]

5-37. Manufactured Housing – As Personal Property. Manufactured housing, even if permanently located on land, may also be treated as personal property for some purposes. See RSA 382-A. See also Standard 6-21 for foreclosure on manufactured housing.

[2007, 2008, 2009]

5-38. Lot Line Adjustment – New Subdivision Lines Created. When parties agree to change the common boundaries as shown on a recorded plan or in a deed, a recorded, approved lot line adjustment plan constitutes a subdivision, and subsequent conveyances must be consistent with the adjusted lot line.

[2007]

5-39. Lot Line Adjustment – Deed Transfer. Where the adjacent parcels are held by more than one owner, deed or deeds of transfer are required to adjust the lot lines.

[2007]

5-40. Lot Line Adjustment – Parcels of One Owner Affected. The recording of a lot line adjustment plan approved by the planning board where one owner owns both lots is effective without a deed, and a subsequent conveyance, not in accordance with the adjusted line, is an illegal subdivision.

[2007]

5-41. Power of Attorney – General. Any power of attorney to convey real estate must be signed and acknowledged, and ordinarily should be recorded. See RSA 477:9. See also Standard 5-52.

[2007, 2008]

5-42. Power of Attorney – Trustee Delegation. A trustee may delegate duties, powers, and investment and management functions that a prudent trustee of comparable skills could delegate. See 564-B:8-807.

[2007]

5-43. Nondurable Power of Attorney - Presumption of Continuing Validity. Where an instrument is executed by an attorney in fact, and a nondurable power of attorney (i.e., one not falling within RSA 506:6, I) whose terms expressly or implicitly authorize such execution appears of record, it may be presumed in the absence of notice of contrary information that as of the date of execution the power of attorney had not been amended or revoked and the principal was alive, competent, and not disabled. See RSA 506:6, III (effective January 1, 1986).

[2007]

5-44. Durable General Power of Attorney – Executed Prior to 2004. A durable general power of attorney (i.e., one described in RSA 506:6, I) executed and acknowledged prior to January 1, 2004, is valid despite the absence of signed statements by the principal or agent conforming to RSA 506:6, VI and VII. See RSA 506:6, VIII(a)(1).

[2007]

5-45. Durable General Power of Attorney – Executed After 2003. A durable general power of attorney executed or acknowledged on or after January 1, 2004, should ordinarily not be accepted as valid unless signed statements by the principal and agent complying with RSA 506:6, VI and VII, are attached to and recorded with or as part of

the power of attorney. The principal's statement should be signed contemporaneously with the power of attorney, while the agent's statement need only be signed prior to the exercise of the power. See RSA 506:6, VI (heading of disclosure statement), and RSA 506:6, VII(b). For exceptions to the general rule, see RSA 506:6, VIII(b) and (c).

[2007]

5-46. Limited Durable Power of Attorney. A limited durable power of attorney is valid without the statutory principal acknowledgment or agent disclosure statements. See RSA 506:6, VI(a), VII(a), and XI.

[2007]

5-47. Foreign Durable Power of Attorney. A durable power of attorney validly executed under the laws of another state or foreign jurisdiction shall be deemed valid under New Hampshire law. See RSA 506:6, IX.

[2007]

5-48. Buildings on Land of Another. Buildings may be conveyed and mortgaged separately from land on which they sit. See RSA 477:44, I.

[2007]

5-49. Access to Land. Access does not affect marketability of title of a described parcel of land.

Comment: A landlocked parcel may have perfectly good and marketable title, but have no legal rights to ingress and egress. Lack of access may affect the ability to obtain a building permit. [2007]

5-50. Ambiguous Deed Descriptions. A deed must contain a description of the land to be conveyed. The absence of a description, or the setting forth of a description which is so vague and uncertain as to render it impossible to ascertain the location of the property, may render the deed ineffective or title unmarketable. A deed need not in or by itself fully describe the property if it provides information by which identification is possible (such as reference to a previously recorded deed or plan). It is reasonable to rely upon corrections or improved descriptions appearing in later conveyances and upon the passage of time in which difficulty has not arisen from the less than perfect description. All matters of record, such as adjoining descriptions, maps and surveys, and instruments describing or referring to other land owned by the grantor, can be means of clarifying the ambiguous description. An affidavit from a surveyor or a full instrument survey may be useful to reconcile vague, conflicting or uncertain description issues. See Flanagan v. Prudhomme, 138 N.H. 561 (1994); Chao v. Richey Co., Inc., 122 N.H. 1115 (1982); Harvey v. Hsu, 144 N.H. 92 (1999); White v. Francoeur, 138 N.H. 307 (1994); 17 C. Szypszak, New Hampshire Practice, Real Estate §5.07 at 112 (1st ed. 2003).

Comment: Minor discrepancies between a deed and a plan description may not necessarily render the title unmarketable, without further evidence to the contrary.

[2007, 2011]

5-51. Civil Union Status. From January 1, 2008, through December 31, 2010, a person joined in a New Hampshire civil union holds the same rights as a married person, including homestead rights in real property that is his or her principal residence. The titleholder and person joined in civil union with the titleholder should release their homestead rights upon conveyance if the property is their principal residence, or if it is not, state that the property is not the homestead of the titleholder or the titleholder's partner, or just that the property is not homestead property. Deeds and mortgages should indicate the civil union status as well as the marital status of the grantor(s) and any partner. "Single" may be deemed to mean, "not joined in either marriage or civil union"; however, "unmarried" alone should ordinarily not be accepted as implying that the person is not joined in a civil union. As long as the wording of the status of persons joined in a civil union is clear and unambiguous, it is acceptable to designate the other party to a civil union by any term such as "partner," "civil unionee," or "spouse." See RSA 457-A and Standards 5-2, 5-3, 5-4, 5-5, 5-6 and 5-7.

RSA 457 relative to marriage has been amended as of January 1, 2010, to allow same sex marriage, and RSA 457-A relative to civil unions has been repealed effective January 1, 2011; and as of the latter date all persons joined in civil unions who have not already married each other during 2010 will be deemed to be married. See RSA 457:1-a & 46.

[2008, 2009]

5-52. Execution and Acknowledgment by Attorney-in-Fact. Execution of a recorded instrument under a power of attorney may be accepted if the names of the principal and agent both appear in the signature block (either in the written signature itself or in separate printing, or both), along with some reference to the agent's capacity, e.g., "as attorney-in-fact for," "under power of attorney," "POA," etc. Acknowledgment of such an instrument may be accepted if it recites that the named agent has "acknowledged" the instrument "before" the official, and refers to the agent's capacity either expressly or by a general reference back, e.g., "for the purposes therein contained." See Standards 5-41 and 5-43.

Comment: The requisite formalities for execution of an instrument by any agent are the same as for any principal.

[2008, 2011]

5-53. Certain Future Interests Limited. Possibilities of reverter, rights of re-entry and executory interests that are first recorded after December 31, 2008, are void unless the grantor or grantee is a public or charitable organization, with certain exceptions. For other restrictions and requirements see RSA 477:3-b and 508:2, II.

[2008]

5-54. Deeds without Covenants. A non-statutory-form deed containing no covenants but which is otherwise valid may be sufficient to pass title absent contrary information.

[2011]

5-55. Deeds Lacking Statement of Consideration. A deed meeting the minimal requirements of RSA 477:1 is effective as a conveyance despite the absence of a statement of consideration, or the presence of a statement that there was no consideration.

Comment: It is now generally recognized in most jurisdictions that consideration is not necessary to support the validity of a conveyance. 14 Powell, R., Powell on Real Property § 81A.04[1][b][i]. Moreover, the New Hampshire statutes do not contain any clear statement that failure of a deed to state consideration renders it invalid. RSA 477:1 does not include a statement of consideration in its list of requirements for an effective deed; and RSA 477:16 provides only that to the extent the omission to recite any consideration may be a defect, the defect will be deemed cured by the passage of ten years. Pursuant to RSA 477:23, the statutory forms of deed are not mandatory, and the modern practice is to accept instruments that do not strictly follow the statutory forms.
[2012]

ARTICLE VI. MORTGAGES

6-1. Release of Homestead. If a mortgage of homestead property is executed by an owner and spouse *or civil union partner*, no separate release of homestead is required. See RSA 480:5-a; Verdolino v. Anderson, 12 F. Supp. 2d 205 (D.N.H. 1998); and Standards 5-4. (Italicized words applicable only from 2008 through 2010 – see Standard 5-51.)

[1954, 1980, 2007, 2008, 2009]

6-2. Purchase Money Mortgage. In the case of a purchase money mortgage, homestead of the title holders and their spouses *or civil union partners* does not have priority over the interest of the purchase money mortgagee. RSA 480:5-a. (Italicized words applicable only from 2008 through 2010 – see Standard 5-51.)

[1954, 1974, 1980, 2007, 2008, 2009]

6-3. Assignments. An assignment of a mortgage is not required to be under seal, to be acknowledged or to be witnessed.

[1954, 1980]

6-4. Discharge After Foreclosure. Although it is not recommended, the discharge of a mortgage after the same has been foreclosed does not invalidate the foreclosure.

[1954, 1974]

6-5. Mortgage in Joint Tenancy. A mortgage held by two persons in joint tenancy may be properly discharged by a surviving joint tenant.

[1954, 1974]

6-6. Discharge by Attorney. A discharge of a mortgage by an attorney for the mortgagee is not valid without a recorded power of attorney.

[1954]

6-7. Limitation of Action. The passing of 20 years' time after the due date of a mortgage note does not necessarily invalidate the mortgage. See 50-year limitation against private mortgages in RSA 479:28, 29.

[1954, 1974, 2007]

6-8. Parties to a Discharge. The discharge of a mortgage held by tenants in common and discharged by one tenant, or by the surviving tenant, is defective without further evidence. A discharge of a mortgage held in joint tenancy and discharged by one tenant while both are living is defective without further evidence.

[1954, 1974]

6-9. MERS Mortgages. When MERS (Mortgage Electronic Registration System, Inc.) is the mortgagee of record, as nominee, assignee, or otherwise, any assignment, foreclosure document, or discharge shall be executed by a duly authorized officer of MERS. See www.mersinc.org. [2007]

6-10. Foreclosure Affidavit and Notice of Sale. For nonjudicial foreclosure sales, the foreclosure deed must be accompanied by a copy of the notice of sale and an affidavit describing the sale in compliance with the procedure and notice requirements of RSA 479**.** RSA 479:26, I; RSA 477:32. Care should be taken when examining the affidavit and notice of sale as to the identity of the foreclosing party/mortgagee and the sufficiency and dates of execution and recording of any assignment(s). See, e.g., First Horizon Home Loans v. Gregory A. Trotter, No. 09-C-0591, Orders of 4/7/2010 and 6/3/2010 (Rockingham County Super. Ct.) (Lewis,J.), aff'd, No. 2010-0461, Order of 2/24/2011 (N.H. 2011) (unpublished).

If there is no separately recorded waiver executed pursuant to Section 107 (50 USC App. 517) of the Servicemembers Civil Relief Act, a foreclosure affidavit should contain a statement that no person in interest was in the military service at the time of the foreclosure or within ninety days prior to the foreclosure (or that the party in interest was on active duty at the time the debt was incurred, in which case the Act does not apply). For nonjudicial foreclosures occurring between July 30, 2008 and December 31, 2012, an affidavit should state that no person in interest was in the military at the time of the foreclosure or within nine months prior to the foreclosure. Section 2203 of the Housing and Economic Recovery Act of 2008 (Pub.L. 110-289, 122 Stat. 2654), amending Section 303 (50 USC App. 533) of the Servicemembers Civil Relief Act; as amended by the Helping Heroes Keep Their Homes Act of 2010 (Pub.L. 111-346, 124 Stat. 3622).

Comment: Given the history of amendments extending the requirement that the affidavit specify nine months instead of ninety days, attention should be given to possible future such amendments.

[1963, 1988, 1997, 2007, 2010, 2011, 2012]

6-11. Redemption After Foreclosure. A one-year period of redemption may exist whenever mortgaged property is foreclosed under a writ of possession or under other process of law not involving a power of sale. RSA 479:19.

[1963, 2007]

6-12. Notice to IRS. When an undischarged I.R.S. Notice of Federal Tax Lien is on record at the time of foreclosure, a power of sale mortgage foreclosure affidavit should contain a statement of compliance with I.R.S. notice requirements. Since November 2, 1966, refer to IRC §7425(c) & (d), and regulations thereunder, with respect to the 120-day redemption period. See Standard 9-16.

[1974, 2007]

6-13. Statement of Indebtedness. A mortgage is not defective for failure to state the limit of secured indebtedness (if applicable), but statement of such a limit is necessary in order to indicate the extent of the mortgage's priority. See RSA 479:2, 3 and 5.

[1974, 1988, 2007]

6-14. Foreclosure of Separate Parcels. After September 3, 1977, where a mortgage covers several separately described parcels, a foreclosure sale may be held on any one of the parcels if the notice of the sale so provides. See RSA 479:25, effective September 3, 1977.

[1974, 1980, 2007]

6-15. Notice Requirements. For power of sale foreclosures held after June 1, 1978, it is required that the foreclosure affidavit recite all notices given. For power of sale foreclosures held on June 1, 1978, or before, it was not required by statute that notices be sent to any person other than the mortgagor. See RSA 479:25.

[1988, 2007]

6-16. Supplemental Affidavits. Defects in the original Affidavit of Sale Under Power of Sale in Mortgage pursuant to RSA 477:32~~,~~ may be cured in a subsequent supplemental affidavit. See also RSA 479:26.

[1988, 2011]

6-17. Discharge Formalities. A mortgage discharge or partial release may be witnessed or acknowledged. RSA 479:7. For the period January 1, 1980 to December 31, 1986, a witness was required. For discharges prior to 1980, see RSA 479:9.

[1988, 2007]

6-18. Discharge by Affidavit. A mortgage may be discharged by affidavit of a New Hampshire attorney after compliance with the requirements of RSA 479:7-a.

[2007]

6-19. Irregularities and Discrepancies in Assignments and Discharges. An instrument is sufficient as an assignment, discharge or partial discharge of a mortgage notwithstanding errors in dates, amounts, book and page of record, property descriptions, names and positions of parties, if, from circumstances of record, it can be inferred with reasonable certainty that assignment or discharge was intended. See RSA 479:9.

Comment: When an assignment or discharge is recorded by a mortgagee with a name different from the mortgagee or assignee of record, the instrument should recite the relationship of the present holder to the holder of record and any intervening holders. In the case of a bank assignee where such relationship is not recited, it may be possible to confirm the successor status of the most recent holder by reference to official bank histories available on a government website, or on the listings in a private publication such as the Lane Guide. For a link to the government website, see "Bank Histories" on the Real Property Law Section Materials page on the New Hampshire Bar Association website.

[1988, 2007, 2012]

6-20. FDIC and RTC as Receiver. For foreclosure deeds, discharges and assignments given by the Federal Deposit Insurance Corporation ("FDIC") or the Resolution Trust Corporation ("RTC") as receiver of depository institutions, or by other depository institutions as successors in interest to the FDIC or RTC, see Standards 12-1 and 12-2.
[1997, 2007]

6-21. Manufactured Housing. A manufactured housing loan may be secured by a mortgage. Alternatively, a security interest in manufactured housing may be perfected pursuant to RSA 382-A:9; however, in such case any foreclosure must be conducted under that statute rather than under RSA 479, and there must be recorded an express release of homestead interest(s) , executed and acknowledged by the borrower and by their spouse, to prevent a setoff at the time of the foreclosure sale. RSA 477:44, IV. See In re Labonte, 328 B.R. 372 (D.N.H. 2005).
[1997, 2007]

6-22. Duration of UCC Financing Statement on Manufactured Housing. A UCC financing statement securing a manufactured housing transaction is effective for 30 years. RSA 382-A:9-515(b), effective July 1, 2001. [2007]

6-23. Mortgage Executed Under Power of Attorney. The execution of a mortgage under power of attorney is subject to the same requirements as a deed. See Standard 5-41.
[2007]

ARTICLE VII. ESTATES

7-1. Notice of Appointment. The failure to file a return of notice of appointment of an administrator or executor does not create any defect in title. See RSA 553:16, effective August 11, 1973. The Registry of Probate is responsible for publication.

[1954, 1974]

7-2. Release of Interest. The failure to record in the Registry of Deeds in the county of administration a release of dower, curtesy, homestead, and waiver of the will to take a distributive share in fee does not create a defect in title. But see RSA 560:14, revised 1971, which requires recording of such release in the Registry of Deeds where the land lies but provides no penalty for failure to record such release.

[1954, 1974]

7-3. Ineffective Waiver. Unless the time for filing has been extended by the Probate Court, a release of dower, curtesy, homestead and waiver of the will is ineffective if (a) prior to August 21, 1967, a release and waiver have not been filed in the Probate Court within one year after the decease of the testator or intestate, or (b) after August 21, 1967, the release and waiver have not been filed within six months of the appointment of the administrator or executor. See RSA 560:10 and 14.

[1954, 1974, 1980]

7-4. Lapse of Specific Devise. Where there is a specific devise of real estate to "A" or "A and his heirs," and "A" predeceases the testator, the devise will not lapse if "A" leaves heirs in the descending line who survive the testator. RSA 551:12.

[1954, 1988, 2007]

7-5. Pretermitted Heir. If a testator neglects to name a child who predeceases the testator but such child is survived by issue not mentioned, such issue takes his or her estate as if the testator had died intestate. RSA 551:10.

[1954, 1974, 1980, 2007]

7-6. Right of Representation. If a testator names a child who has deceased but such child is survived by issue, such issue will be considered as mentioned in the will and will not take by intestacy.

[1974, 1980]

7-7. Foreign Bequest. If an authenticated foreign will is filed in New Hampshire which makes cash bequests, leaving the residue including real estate to "A," "A's" title may be defective unless there is proof in New Hampshire Registry of Probate or Deeds of payment of such bequests. See Standard 3-1.

[1954, 1974, 2007, 2013]

7-8. Sale by Foreign Executor. If an authenticated copy of a foreign will and the probate thereof is filed in New Hampshire, there being no appointment of a local administrator or executor, but the will gives the executor power to convey real estate, a

conveyance during the course of administration by such an executor will not be considered invalid merely because such executor received no appointment or license from the New Hampshire Probate Court. See Standard 7-19.

[1954, 1974, 1980, 2007, 2013]

7-9. Two-Year Limitation. If there is no administration taken out upon the estate of a deceased person, and two years elapse, debts may be barred as to the real estate owned by said decedent. RSA 556:29.

[1954]

7-10. License to Sell Real Estate. Where a petition for license to sell real estate to pay debts is granted later than two years from the date of appointment, a deed under such license, otherwise properly obtained, is valid.

[1954]

7-11. Spousal Consent. A deed given with the consent of the heirs or devisees is not defective because of the lack of consent of the spouses of such heirs or devisees.

[1954, 1974, 1980]

7-12. Consent by Guardian ad Litem. A guardian ad Litem may (after August 17, 1971) consent to a sale or to a Petition for License to Sell with Consent on behalf of persons under disability or whose whereabouts are unknown. RSA 559:18.

[1974, 1980, 2007]

7-13. Absence of Accounting. The absence of an accounting by an executor or an administrator does not of itself invalidate title to real estate.

[1954]

7-14. Real Estate Description. An erroneous description or failure to include real estate in an inventory should not be treated as a defect in title.

[1954, 2007]

7-15. License to Sell. In the case of a deed under license to sell to pay debts, the rights of the surviving spouse or guardian of orphaned minor children may be outstanding unless he or she has waived or released such rights to the grantee, or assented to the license. See RSA 559:2, 5.

[1954, 1974, 2007]

7-16. Federal Tax Lien - Closing Letter. If the estate appears to be subject to a federal estate tax and the final account has not been filed, release of the federal tax lien, if obtainable, or estate tax closing letter, should be obtained and filed with the Probate Court. See Standard 9-6.

[1963, 1974, 2007]

7-17. Federal Tax Lien - Gross Estate. Unless there are facts to the contrary, a title examiner may generally rely upon an affidavit that the affiant is the person responsible to

file a federal estate tax return and that states the gross estate of the decedent is not large enough to necessitate the filing of a federal estate tax return under IRC §2031.

[2007]

7-18. Tax Payment. The payment of the federal or state estate or inheritance taxes, appearing in the final probate account or record, shall be considered final in the absence of record facts indicating a likelihood of further assessments by the Commissioner of Internal Revenue or the Commissioner of Revenue Administration.

[1963, 1980, 2007]

7-19. Conveyance During Administration. During the pendency of probate administration, conveyances of the decedent's real estate by the executor or administrator shall be made pursuant to a license from the Probate Court, unless the power to sell the real estate is given to the executor in the will. Rollins v. Rice, 59 N.H. 493 (1880). However, after August 26, 1977, conveyances of the decedent's real estate by the executor or administrator not under a power in the will may be made without a license from the Probate Court if made with the written consent of the surviving spouse and heirs at law or devisees, or their guardians or conservators, unless the will otherwise provides. Any deed by a devisee or by an executor under a power contained in the will during the pendency of probate administration, is subject to the claims of creditors and the power of the Probate Court to sell the property to pay debts. See RSA 559:17, 18 and 19 and the cases cited thereunder.

[1974, 1980, 1988, 2010]

7-20. Dower and Curtesy. Where a wife died after midnight of August 10, 1971, if there were no children born to the marriage of such decedent and the surviving widower, there is no curtesy right (Laws 1971, 179:31). If a husband died after said date, there is no dower right whatever.

[1974, 1980]

7-21. Curtesy. If any child of a decedent and her surviving widower was born prior to August 10, 1971, then the curtesy right is vested in the widower and is not extinguished by the statute. But see RSA 560:3, II and III.

[1974, 1980, 1988, 2007]

7-22. Testacy. A will is not effective to pass title to New Hampshire real estate unless it is:

(a) Probated (with or without administration) in New Hampshire; or

(b) Probated (with or without administration) in another jurisdiction, but only after authenticated copies of the will and probate have been filed in a New Hampshire Probate Court, by decree of the court following application of a party in interest, and after such notice and hearing as the court may order. RSA 552:1, 13.

In either case, title passes as of the date of death, subject to defeasance by the fiduciary acting either with the consent of those who would have taken title pursuant to the will, or under license from the Probate Court.

[1997]

7-23. Intestacy. In the case of intestacy, title passes to the heirs as of the date of death, subject to defeasance by the fiduciary acting either with the consent of the heirs, or under license from the Probate Court. See Lane v. Thompson, 43 N.H. 320 (1861).

The fact of death and the identities of the surviving spouse, if any, and the heirs must normally be evidenced of record as follows:

(a) Where death occurred prior to January 1, 1997, or more than 20 years prior to the date of search, recitals in affidavits or acknowledged instruments of record as to the fact of death and the identities of the surviving spouse, if any, and the heirs may be relied upon in the absence of any contrary information. A statement as to the identities of the heirs may be presumed to include all of the heirs, even if not expressly stated.

(b) Where death occurred after January 1, 1997, and within 20 years prior to the date of search, but not within the period specified in the next subsection, recitals in affidavits or acknowledged instruments of record may be relied upon in the absence of contrary information, if such recitals state facts that establish the following:

1. The date of death and residence or domicile at death;

2. The nonexistence of a will;

3. Information regarding the surviving relatives and/or the value of the estate to the extent necessary to establish the identities of the heirs to the New Hampshire real estate; and

4. Whether and where any probate proceedings have been filed.

(c) Where death occurred after January 1, 1997, and within two years prior to the date of search, New Hampshire administration is required.

See Standard 5-51.

[1997, 2008]

7-24. Fiduciary Deed With Consent of Heirs. Notarization of the signature(s) of the heir or devisee on the consent to sell is not required, since the consent by itself conveys no interest in the property, but only assents to the defeasance of that person's interest in the property. Such consent may be incorporated in the deed, recorded with the

appropriate Registry of Deeds or filed with the Probate Court. See Standards 7-22 and 7-23 and RSA 559:5.

[2007]

7-25. Sale by Foreign Guardian or Conservator. A guardian of the estate or conservator duly appointed in any other state may obtain appointment as guardian or conservator in this state by filing a petition and a certified copy of the foreign appointment with the probate division of the circuit court, and may thereafter sell property of the ward located in this state in the same manner as a resident guardian or conservator. See RSA 464-A:44.

[2013]

ARTICLE VIII. CORPORATIONS, PARTNERSHIPS, AND LIMITED LIABILITY COMPANIES

8-1. Foreign Entity – Certificate of Authority Not Required. If a deed or other instrument is given by a corporation, general or limited partnership, or limited liability company organized and doing business under the laws of a state other than New Hampshire, it is not necessary to require a showing that such entity has obtained authority to do business in New Hampshire. See Standards 4-11 through 4-13.

[1954, 1963, 1997, 2007]

8-2. Entity Signatory – Authority Presumed. Where there appears in the chain of title an instrument of a corporation, general or limited partnership, or limited liability company that is executed, acknowledged, and sealed in proper form (RSA 477:2 et seq.), and purports to be executed by one or more officers of the corporation, general partners of the general or limited partnership, or managers, members or officers of the limited liability company, as the case may be, or by an authorized agent of the entity, the examiner may assume, in the absence of any notice of contrary information, that the persons executing the instrument accurately stated their identities and capacities and that they were in fact authorized to execute the instrument on behalf of the entity. As of August 30, 1977, corporate seals are no longer required. See Standards 5-26 and 5-27.

[1954, 1963, 1980, 1997, 2007]

8-3. Entity – Existence Presumed. Where there appears in the chain of title an instrument of a corporation, general or limited partnership, or limited liability company, and the instrument is executed in proper form, the examiner may assume that the entity was legally in existence at the time the instrument took effect.

[1963, 1980, 1997]

8-4. Entity – Authorization Presumed. Where there appears in the chain of title an instrument of a corporation, general or limited partnership, or limited liability company, an examiner may assume that the entity was authorized or not forbidden to acquire or convey the real property affected by the instrument.

Note: The purpose of these standards is to indicate what minimal record evidence of existence, capacity and authority in regard to a past conveyance may be subsequently accepted and relied on by a title examiner, in the absence of notice of conflicting or inconsistent information, as having passed marketable title. In dealing with a concurrent transaction, it is prudent to require more evidence of existence, capacity and authority, in the form of, e.g., copies of articles, bylaws, or partnership or limited liability company agreements, and certificates of officers, partners, or members or managers, as appropriate; however, under these standards it is not necessary to place such further documentation on record.

[1963, 1980, 1988, 1997]

8-5. Corporate Dissolutions. Where a business corporation was dissolved by action of the Secretary of State prior to January 1, 1993, for failure to pay fees or file required

reports, title to real property held in the corporate name may be deemed to have automatically vested in the shareholders by operation of law at the expiration of the three-year winding down period provided by former RSA 293-A:95. See Jenot v. White Mountain Acceptance Corp., 124 N.H. 701 (1984) and RSA 293-A:17.03. However, for dissolutions occurring after January 1, 1993, RSA 293-A:14.21(b) provides for an indefinite winding-down period, and RSA 293-A:14.05(c) provides that dissolution does not effect a transfer of title to the corporation's real property.

[1997]

8-6. Entity Name Change, Merger, Conversion – Deed Not Required. Where a recorded instrument refers to a corporation, general or limited partnership, or limited liability company as successor to another entity, by use of terms such as "formerly known as," "successor by merger," or "successor by conversion," or by recitation of facts concerning a name change, merger, or conversion, an examiner may assume in the absence of evidence to the contrary that the interest in real property held by the former entity has vested in the new entity without the necessity of a deed, assignment, or of any recorded documentation of the name change, merger, or conversion. See RSA 293-A:11.06(a)(2).

[2007]

8-7. Unincorporated Associations. Any unincorporated association, society, foundation or similar organization receiving a donation, grant or gift of real or personal property shall be treated as a corporation so far as may be necessary to take, hold, manage, use and convey any such donation, grant or gift; and the directors, trustees or other officers of such association, society, foundation or organization, if they be citizens of the United States, shall have the power to take, hold and convey any such donation, grant or gift. See RSA 292:14.

[2009]

ARTICLE IX. LIENS

9-1. General Tax Lien. RSA 80:19 states, "The real estate of every person or corporation shall be holden for all taxes assessed against the owner thereof; and all real estate to whomsoever assessed shall be holden for all taxes thereon. All such liens shall continue until one year from October first following the assessment. For the purposes of this chapter, the word 'taxes' shall include special assessments and agreements in lieu of or in the nature of special assessments."

Comment: This statute raises the possibility that the lien for taxes assessed by any taxing authority, including municipalities, may apply to real estate of the taxpayer located in any county or municipality in the state. However, general practice assumes that the lien for municipal taxes and assessments applies only to the real estate against which they are assessed.

[1974, 1980, 2007]

9-2. Manufactured Housing. Manufactured housing is subject to local real property taxes if: (1) brought into the city, town or unincorporated place before April 1, provided it remains until after June 15 in any year; or (2) brought into the city, town, or unincorporated place after April 1 and before the following January 1, provided it remains for more than ten weeks and provided a tax has not been assessed elsewhere in the state for that year. RSA 72:7-a. Taxes should be checked in all towns or cities where the manufactured housing is known to have been located during the tax year.

[1997, 2007]

9-3. New Hampshire Legacy and Succession Tax. For deaths prior to April 1, 2003, the lien for unpaid New Hampshire Legacy and Succession Tax expired 20 years after the date of death of the decedent. Former RSA 86:58 (RSA Chapter 86 repealed January 1, 2003). See Standard 7-18. See also former RSA 86:8 (repealed January 1, 2003), which provided that the undivided interest passing to a surviving joint tenant was subject to the tax (and lien) unless an exemption applied. See also former RSA 86:6-a, which provided that every conveyance made by a decedent within two years of death (including a conveyance to the decedent and another as joint tenants) without reasonable consideration was deemed to have been made in contemplation of death and so was subject to the tax (and lien).

[1974, 1980, 1997, 2007]

9-4. New Hampshire Estate Tax. The lien for New Hampshire Estate Taxes remains valid until paid. RSA 87:5. See Standard 7-18. [1954, 1974, 1980]

9-5. Federal Gift Tax Lien. A federal gift tax lien may continue for a period of not more than ten years from the time of a donor's last gift made during the calendar year in respect to which such lien first arose, and may apply to after-acquired property of the donee or transferee, but does not apply to a purchaser of, or the holder of a security interest in or mechanic's lien on, the property transferred. IRC §6324(b) and (c).

[1954, 1974, 2007]

9-6. Federal Estate Tax Lien. Unless a notice to the contrary is otherwise recorded in the applicable Registry of Deeds, a federal estate tax lien may continue as a lien on all of the property included in the gross estate of a decedent from the date of death for a period of not more than ten years. The federal estate tax lien will not be binding against a purchaser of, or the holder of a security interest in or mechanic's lien on, the property transferred. IRC §6324(a).

[1954, 1974, 2007]

9-7. Lien for Municipal Utility Charges. Unless otherwise provided by a city charter, a municipality that supplies water, sewer, gas or electric services to real estate has a lien on such real estate for the charges for those services, which lien expires 18 months from the date of the unpaid bill or six years from the date of the last unpaid bill if the municipality has recorded a notice of lien. RSA 38:22 and 24; RSA 149-I:11.

[1963, 1974, 1980, 2007]

9-8. Timber Yield Tax. Unless a bond or other security is in place, the timber or yield tax is a lien upon the subject real estate of the owner commencing on the date of cutting and continuing for a period of 18 months following the date upon which the local taking official received the report of cut required by RSA 79:11. See RSA 79:6, as amended.

[1963, 1974, 1980, 1988, 2007]

9-9. Excavation Tax. Unless a bond or other security is in place, an excavation tax assessment shall, on the date the excavating commences, create a lien upon the land on account of which it is made and against the owner of record of such land and shall continue for a period of 18 months following the date of assessment by the local assessing officials. RSA 72-B:7.

[2007]

9-10. Lien for Meals and Rooms Tax. This is a lien in favor of the State of New Hampshire upon all property and rights to property, whether real or personal, belonging to the operator, and "arises at the time demand is made by the commissioner and continues until the liability for the sum, with interest and costs, is satisfied or becomes unenforceable." RSA 78-A:21, effective June 27, 1978. "No lien against real property under this section shall be effective until it is recorded at the Registry of Deeds for the county in which the real property lies." Id.

[1974, 1980]

9-11. Lien for Tax on Railroads and Public Utilities. See RSA 82:24.

[1974]

9-12. Lien for Tax on Banks. See RSA 84:20, repealed July 1, 1993.

[1974, 2007]

9-13. Lien for Franchise Tax on Public Utilities. See RSA 83-B:19, repealed July 1, 1983. [1974, 2007]

9-14. Unemployment Compensation Property Lien. There is a lien in favor of the State of New Hampshire upon all property and rights to property, whether real or personal, belonging to an employer for contributions not paid to the Unemployment Compensation Fund. This lien "arises at the time demand is made by the commissioner and continues until the liability for the sum, with interest and costs, is satisfied." "No lien against real property under this section shall be effective until it is recorded at the Registry of Deeds for the county in which the real property lies." RSA 282-A:143.

[1980, 2007]

9-15. General Federal Tax Lien. A general tax lien in favor of the United States, imposed by IRC §6321, attaches to all property and rights to property, including after-acquired property. This general tax lien continues until it is satisfied or becomes unenforceable by reason of lapse of time. The expiration of ten years after assessment will ordinarily bar enforcement, but the expiration of said statutory period may be extended for various reasons. It should not be concluded that a lien has become unenforceable from the mere fact that ten years have elapsed since the date of assessment. IRC §6322, 6502(a).

[1974, 1997, 2007]

9-16. Federal Foreclosure Notice and Redemption. The foreclosure of real estate mortgages which are subject to junior federal real estate tax liens must comply with special notice requirements of IRC §7425, and the regulations thereunder, and such real estate remains subject to the federal government's right of redemption, as provided by IRC §7425(d), which continues for 120 days from the date of the foreclosure sale. The affidavit recorded with the foreclosure deed should indicate compliance with the special notice requirements. See Standard 6-12.

[1974, 1980, 2007]

9-17. Old Age Assistance Lien. The old age assistance lien applies to the property of both the recipient and his or her spouse. This lien may attach to after-acquired property. See RSA 167:14.

[1963, 1974]

9-18. Lien for Certain State Taxes. RSA 21-J:28-c provides for a lien with respect to any tax administered by the New Hampshire Department of Revenue Administration, arising upon recording of notice at the Registry of Deeds and expiring six years thereafter unless renewed of record (or when paid, if earlier). Such taxes include the Business Profits Tax (RSA Chapter 77-A), the Business Enterprise Tax (RSA Chapter 77-E), and the Real Estate Transfer Tax (RSA Chapter 78-B).

[1974, 1997, 2007]

9-19. Lien for Support to Assisted Persons. Upon recording, the lien is effective until paid or released, and is subordinate to prior recorded mortgages and other valid liens. See RSA 165:28, 30.

[1974, 1980, 2007]

9-20. Lien for Support of County-Assisted Persons. Upon recording, the lien is effective until paid or released, and is subordinate to prior recorded mortgages and other valid liens. RSA 166:20, 22.

[1974, 1980, 2007]

9-21. Commercial Real Estate Broker's Lien. A principal broker who is entitled to a fee, commission, or property management fee pursuant to a signed written contract on commercial real estate has the right to file a notice of lien in the Registry of Deeds. If the fee is due from the seller, the notice must be recorded prior to the deed conveying the property; but if the fee is due from the buyer, then the notice must be recorded within 90 days of such deed but prior to any subsequent deed to a bona fide purchaser for value. Failure to bring suit to enforce the lien within two years of recording extinguishes the lien. See RSA 447-A:1 et seq.

[2007]

9-22. Tax Deed. An examiner may rely on a tax deed with no apparent defects which has been on record for ten years or more, provided that a search of the appropriate municipal records indicates compliance with legal notice requirements. See RSA 80:39, 78; Thomas Tool Services, Inc. v. Croydon, 145 N.H. 218 (2000); J & N Fieldstone Supply, Inc. v. BHC Development Corp., 146 N.H. 500 (2001); and Lee James Enterprises, Inc. v. Northumberland, 149 N.H. 728 (2003). See also Standard 9-43.

[1954, 1974, 1980, 1988, 1990, 2007, 2011]

9-23. Mechanic's Liens. Mechanic's liens must be perfected by recording a court-ordered writ of attachment (pursuant to RSA 447:10) in the Registry of Deeds within 120 days after the last substantial performance of work or supplying of material or supplies by the laborer or supplier. See Thomas v. Finger, 144 N.H. 500 (1999); Holden Engineering & Surveying, Inc. v. Law Offices of D'Amante, 142 N.H. 213 (1997); and Gothic Metal Lathing v. F.D.I.C, 135 N.H. 262 (1992). However, the lien exists prior to recording under certain circumstances. See Topjian Plumbing and Heating, Inc. v. Bruce Topjian, Inc., 129 N.H. 481 (1987).

[1980, 2007]

9-24. Attachments – Duration With Judgment. If a suit has gone to judgment and a real estate attachment has been recorded, the attachment expires six years from the date of judgment. RSA 511:55, I. See Remington Investments, Inc. v. Howard, 150 N.H. 653 (2004).

[1954, 1963, 1974, 1980, 2007]

9-25. Attachments – Duration Without Judgment. A real estate attachment recorded after January 1, 1976, based upon an action in which no judgment has been entered, expires ten years from the date of recording the attachment in the Registry of Deeds. RSA 511:55, II and III. See Remington Investments, Inc. v. Howard, 150 N.H. 653 (2004).

[1980, 1988, 2007]

9-26. Attachments and Return Date. Where a real estate attachment has been recorded and the writ of summons has not been entered by the return date, a purchaser acquiring title subsequent to the return day but prior to the entry of the writ acquires title free of the attachment. Where a real estate attachment has been recorded and a purchaser acquires title after the attachment but before the return day, the subsequent failure to file the writ on the return day may not extinguish the attachment. See RSA 511-A:5.

[1954, 1963, 1974, 1980, 2007]

9-27. Attachments – Effective Date. The effective date of the lien may relate back to the date of service on the defendant, except as to bona fide purchasers for value, or the date specified in the court's order. See RSA 511-A:1, 5 and 8; Standard 9-25.

[1980, 2007]

9-28. Writ of Execution. A writ of execution, if not renewed, expires on the return day of the writ, or when the writ is returned unsatisfied. See McBurney v. Shaw, 148 N.H. 248 (2002).

[2007]

9-29. Sheriff's Sale. A one-year period of redemption exists whenever the premises are conveyed by a sheriff's deed. See RSA 529:26 and 27. Redemption should be via a release or deed by the creditor or purchaser to the debtor, duly recorded. See RSA 529:33.

[2007, 2013]

9-30. Lis Pendens. Recording a lis pendens gives notice but does not create an attachment or perfect a lien. See RSA 511-A:8, III; Topjian Plumbing and Heating, Inc. v. Bruce Topjian, Inc., 129 N.H. 481 (1987).

[2007]

9-31. State Insolvency Proceedings. Attachments, encumbrances, and other types of conveyances of the debtor's property within three months of the beginning of proceedings in insolvency may for specified reasons be declared dissolved. See RSA 568:27.

[1980]

9-32. Current Use Assessment. The recording of a Notice of Current Use creates an inchoate lien under RSA 79-A:22 for the land use change tax that may be assessed pursuant to RSA 79-A:7, which is applicable to land classified as open space land and assessed at current use values on or after April 1, 1974. See Woodview Development Corp. v. Town of Pelham, 152 N.H. 114 (2005); Cub 309 Forms; Cub 307.02; Cub 307.03; Cub 308.03. Note that current use liens may arise prior to the recommended time for a title search under Standard 2-2.

[1980, 2007, 2009]

9-33. Conservation Restriction Assessment. There is a lien under RSA 79-B:9 for the inconsistent use penalty that may be assessed pursuant to RSA 79-B:6. [1997]

9-34. Dissolution, Discharge or Release of Attachment. A dissolution, discharge or release of an attachment should identify the attachment to which it applies and must be signed by the plaintiff or plaintiff's attorney; but such document does not need to be witnessed, notarized or acknowledged. See RSA 511:8.

[1988, 2007]

9-35. Hazardous Waste Liens – State. During the period from June 23, 1981 through January 1, 1987, the lien of the State of New Hampshire for hazardous waste clean-up costs pursuant to RSA 147-B:10 took priority over all other claims, and attached to all property of the person against whom the lien was asserted, regardless of whether the property was affected by the hazardous waste and regardless of where the property was located in the state, so long as a lien was filed in that county.

From and after January 1, 1987, the "super priority" of this lien applies only to the property affected by the hazardous waste (excepting residential property from June 18, 1989 onward) and the State's lien as to other property of the affected party takes priority from the date and time of recording of a lien notice by the state in the county where the property is located. See RSA 147-B:10-b, III.

All of the above liens (regardless of priority) attach only to property located in the county or counties where the lien is recorded.

[1988, 1997, 2007]

9-36. Hazardous Waste Liens – Federal. There is a federal lien which is effective upon recording in the Registry of Deeds in the county where the contaminated property is located. See 42 U.S.C. §9601 et seq.; RSA 454-B:2, II.

[1988, 1997, 2007]

9-37. Child Support Lien. There is a lien which is effective upon recording against property of the responsible party for the collection of child support provided by the state. RSA 161-C:10 et seq.

[1988, 2007, 2008]

9-38. UCC Financing Statement. A UCC financing statement that is recorded in the Registry of Deeds creates a lien on the real estate to the extent that the affected goods are fixtures. A recorded termination statement will discharge the UCC lien. UCC financing statements are effective for five years from the date of recording, unless continued; however, UCC financing statements against manufactured housing filed after July 1, 2001 are effective for 30 years. See RSA 382-A:9-515.

[2007]

9-39. Hazardous and Dilapidated Building Lien. The hazardous and dilapidated building lien (including costs, attorney's fees and expenses incurred by the municipality) applies to the subject property, and may also be recorded and enforced against any other real property owned by the same owner in the same manner as provided in RSA 80 for tax liens. The hazardous and dilapidated building lien has the same priority as a tax lien

on the subject property; however, the lien is subordinate to any prior lien of record on any other property. See RSA 155-B:9, as amended effective July 27, 2008.

[2008, 2009]

9-40. Housing Code Violation Lien. The costs for repairing housing code violations in a dwelling incurred by a public agency acting under court order, together with allowed costs and attorneys' fees, are a lien against the subject property that can be enforced by a petition to foreclose filed with the superior court. The public agency must record a notice of lien in the applicable registry of deeds, but the lien relates back to the date of the institution of court proceedings under the statute. See RSA 48-A:6. Where a court imposes a fine on a property owner for housing code violations and the fine is unpaid for 45 days, a notice of lien may be recorded for the fine and any related costs and attorneys' fees, with the lien having priority only as of the date of its recording, and the lien may be foreclosed by petition to the superior court. See RSA 48-A:6-a.

[2010]

9-41. Condominium Assessment Lien. Every condominium unit is subject to an inchoate lien for any outstanding unpaid assessments levied against that unit. The lien for any assessment must be perfected within six months of the date of assessment by recording a memorandum of lien in the Registry of Deeds. The lien has priority over all other liens except real estate taxes, mechanics' and materialmen's liens entitled to priority, liens recorded prior to the recording of the condominium declaration, and any amounts owing on a first mortgage held by an institutional lender (except as to the first six months' regular common expense assessments plus all collection costs and attorneys' fees, if certain conditions are met). See RSA 356-B:46, as amended effective January 1, 2011.

[2010]

9-42. Clean Energy Districts – Special Assessments for Municipal Loans. The recording of a notice of assessment in the Registry of Deeds stating that the property is subject to a special assessment related to the installation of clean energy improvements under RSA 53-F creates a lien on the property pursuant to RSA 80:19, which is junior to existing liens of record at the time the assessment is mailed to the owner. A foreclosure of this lien shall not extinguish prior liens of record; but a foreclosure or sheriff's sale under a prior lien shall extinguish this lien.

[2010, 2011]

9-43. Authority to Sell Tax-Deeded Property. A town may be authorized by majority vote at the annual meeting to convey real property acquired by tax deed. In the case of a city or town council, the authorization is granted by majority vote of that body. RSA 80:80, I. Such authority continues for one year from the date of the town meeting or action by the city or town council, unless the authority has been granted for an indefinite period, in which case the warrant article or resolution granting such authority shall use the words "indefinitely, until rescinded," or similar language. RSA 80:80, IV. Such authority may, but is not required to, be recounted in the text of the deed from the municipality. See also Standard 9-22 and RSA 80:89.

[2011]

9-44. Small Claims. Effective September 5, 2008, the recording of a certified copy of a small claims judgment creates an attachment against real estate of the defendant located in the county of recording. RSA 503:12, II.

Comment: This procedure runs counter to the general line of cases that require notice and hearing, with separate judicial approval, to perfect an attachment, although the usual procedures are for prejudgment attachments. See Topjian Plumbing and Heating, Inc. v. Bruce Topjian, Inc., 129 N.H. 481 (1987); and Jerry's Sport Center, Inc. v. Novick, 120 N.H. 371 (1980).

[2012]

ARTICLE X. PLANS

10-1. Recorded Plans. Those matters shown, or not shown, on recorded plans may affect the title (e.g., drainage easements, absence of subdivision approval, lot line adjustments). However, the mere recital of an easement on a plan may not be sufficient to create the easement. See Soukup v. Brooks, 159 N.H. 9 (2009). As of June 20, 1988, a conservation restriction may be created as a result of RSA 674:21-a whether or not a plan or any other instrument appears on record in the Registry of Deeds.

[1988, 2008, 2010]

10-2. Reference to Unrecorded Plan. Title to property conveyed by a deed which refers to an unrecorded plan may be defective if there is no metes and bounds description or no evidence of compliance with subdivision regulations.

[1988, 2007]

10-3. Approvals and Certifications Required. The filing or recording of a plat of a subdivision without the requisite approval of the planning board, or which has not been prepared and certified by a licensed or registered New Hampshire land surveyor, shall be void. Prior to June 29, 1988, a plat of a subdivision was not required by statute to be prepared and certified by a licensed land surveyor. See RSA 674:37; and Standard 5-24.

[1990, 2007]

10-4. Boundary Line Agreement and Plan. A boundary line agreement and plan are defective unless all the prerequisites of RSA 472:3 are met, including actual placement of permanent monuments as shown on the plan. See Standard 5-31 and New Hampshire Dept. of Resources and Economic Development v. Dow, 148 N.H. 60 (2002).

[2007]

10-5. Lot Line Adjustment Plan. A lot line adjustment plan requires subdivision approval. See Standards 5-38, 5-39 and 5-40.

[2007]

ARTICLE XI. CONDOMINIUMS

11-1. Statutory Requirements. The creation of a condominium after September 10, 1977 requires the recording of a declaration and properly certified site and floor plans, in compliance with RSA Chapter 356-B. For condominiums created prior to September 10, 1977, reference should be made to RSA 479-A.

[2007]

11-2. Typical Requirements of RSA 356-B. For condominiums established under RSA Chapter 356-B (effective September 10, 1977), absence of any of the following will normally render title to a unit unmarketable:

(a) Recorded declaration and bylaws (and/or amendments thereto) which submit the land under the unit to the condominium regime, declare the existence of the particular unit (either expressly or impliedly, e.g., by reference to the site and/or floor plans), assign to the unit an undivided interest in the common area and a designated number of votes in the unit owners' association, and otherwise substantially comply with RSA Chapter 356-B.

(b) Recorded site and floor plans which show the particular unit and assign an identifying number to it, contain the required certifications, and otherwise substantially comply with RSA Chapter 356-B.

Comment: A careful review of RSA 356-B and regulations adopted pursuant thereto is recommended to determine the proper form of site and floor plans and required certifications. See RSA 356-B:20 and Jus 1405.05 and 1405.06.

[1997, 2007, 2011]

11-3. Units. A condominium is simply a form of ownership. So long as a unit is created in compliance with RSA Chapter 356-B, it can be defined in a variety of ways, including a detached structure, multi-unit structure, mailbox, parking space, or defined parcel of land.

[2007]

11-4. Floor Plans. The purpose of floor plans is to define the limits of ownership of a unit. Where the unit is land only, the limits of which are shown on the site plan, floor plans may not be necessary. See Standard 11-1.

[2007, 2011]

ARTICLE XII. DEPOSITORY INSTITUTION FAILURES

12-1. Receivership – General. Upon the appointment of the Federal Deposit Insurance Corporation ("FDIC") as receiver of a failed depository institution (or prior to 1996, the appointment of the Resolution Trust Corporation ("RTC") relative to a savings and loan association), title to the assets of the failed institution vests in the FDIC (or RTC) as Receiver by operation of law (12 U.S.C. §1821(d)(2)(A) and 1441a(b)(3) and (4)). With respect to appointment occurring on or after October 13, 2006, under 12 U.S.C. 1821(c)(7) the failed depository institution has thirty (30) days within which to appeal the appointment of the FDIC as receiver or conservator to the local or DC federal district court.

[1997, 2007]

12-2. Receivership – "Good Loans." The FDIC or RTC as receiver typically sells and assigns all of the "good" loans to an "assuming" institution (which may be newly created or preexisting) by unrecorded agreement, often without recording assignments of the individual mortgages. A recital by such an assuming institution, contained in a discharge or assignment of mortgage or in a foreclosure deed or affidavit, to the effect that the assuming institution holds the mortgage by assignment from the FDIC or RTC, may be relied on in the absence of conflicting evidence, provided that the document containing the recital clearly identifies the failed institution, and the appointment of the FDIC or RTC as receiver of that institution appears of record (which may be in the form of an affidavit or a recital in an acknowledged instrument).

Comment: For information on the history and succession of present and former banks via failure, assumption, merger, name change, or otherwise, see the link to "Bank Histories" on the Real Property Law Section Materials page of the New Hampshire Bar Association website.

[1997, 2007, 2012]

12-3. Receivership – "Bad Loans." As to the "bad" loans and the real property standing in the name of the failed institution as of the date of its closure, the FDIC or RTC as receiver typically executes one or more powers of attorney to entities (which may or not be banks) with whom it has contracted to handle foreclosures and sales of such loans and property on behalf of the FDIC or RTC. For any such foreclosure or conveyance to be treated as valid, the conveyancing document must recite that it is executed on behalf of the FDIC or RTC as receiver of the failed institution, the appointment of the FDIC or RTC as receiver of the failed institution must appear of record (which may be in the form of an affidavit or a recital in an acknowledged instrument), and an appropriate power of attorney must be recorded (which may be a master power of attorney recorded only once).

Comment: The FDIC recorded powers of attorney or master powers of attorney in each Registry of Deeds for the 1991 failed institutions. The recordings were indexed under FDIC. FDIC recorded the appointment of Robert W. Schwarzlose to execute and deliver documents on behalf of the FDIC at Book 1870, Page 2413, Merrimack County Registry

of Deeds. He subsequently recorded a notice of successor bank authority to issue discharges; for example, see Hillsborough Country Registry of Deeds at Book 5750, Page 270, regarding the ability of successor banks to issue discharges for loans which were paid prior to the time the FDIC was appointed receiver/conservator of the failed institutions. Similar recordings were made in other registries by original recording or by recording a certified copy of the Hillsborough recording. For more information, see the link to "FDIC Reference Materials" on the Real Property Law Section Materials page of the New Hampshire Bar Association website.

[1997, 2007, 2012]

12-4. Conservatorship. Where the Federal Deposit Insurance Corporation ("FDIC") (or prior to 1996, the Resolution Trust Corporation ("RTC")) is appointed conservator of a depository institution, the depository institution is not dissolved (as in a receivership), but may continue to act in its own name. Accordingly, instruments executed on behalf of such a depository institution may be recognized as valid and effective if either executed by the depository institution by an executive officer, or executed by the FDIC or RTC (or by an attorney-in-fact for the FDIC or RTC acting under a recorded power of attorney) on behalf of the depository institution.

[2007]

ARTICLE XIII. ABSTRACTOR'S CERTIFICATE

13-1. Abstractor's Certificate. The certificate of the abstractor should state that a careful examination of the records in the Registry of Deeds and the Registry of Probate (and other public records, when applicable) has been made insofar as they relate to the title to the land in question, and that the abstract contains all conveyances and other instruments of record properly indexed affecting this title for the period covered by the examination.

N.B. The following suggested Abstractor's Certificate is not to be interpreted as an opinion on the title. It is merely a certification as to the factual record of matters that affect the title. An attorney may review the information given in the abstract to which this certificate is attached, and relating that information to an interpretation of the law, may be able to give an opinion on the title.

Comment: On relationship between attorney and abstractor, see Lawyers Title Ins. Corp. v. Groff, 148 N.H. 33 (2002).

(Suggested Abstractor's Certificate)

Date and hour _____.

The undersigned certifies that the records at the _____ Registries of Deeds and Probate, and at the _____ County Superior Court, when applicable, have been carefully searched, and the following (abstract) (title report) sets forth all matters pertaining to the title to the premises in caption which were properly indexed therein from _____, 20____, to the above day and hour. Unless otherwise noted herein, all conveyances were properly signed, sealed, witnessed and acknowledged and dower, curtesy and homestead were properly released. The (abstract) (title report) was prepared for the sole use and benefit of _____, with the understanding that the undersigned reserves and retains the sole right to reproduce the same. Inquiry should be made as to the existence of possible liens, rights and encumbrances which may not appear of record in the records searched.

This (abstract) (title report) does not constitute a guaranty or opinion of title.

(Description of Property Searched)

[1980, 2007]

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