

MISSISSIPPI TITLE EXAMINATION STANDARDS

2021 SUPPLEMENT

Effective as of August 1, 2021

(This supplement covers changes to the First Edition of the Mississippi Title Examination Standards)

CHAPTER 5: LAND DESCRIPTIONS

5.01 Land Descriptions Generally

Although an examiner does not determine actual boundaries on the ground, an examiner should determine whether each land description in the chain of title is sufficient to identify the land under examination.

Comment:

A legal description affords the means of identifying a specific tract of land and is “an essential term that must be stated with specificity.” Woodruff v. Thames, 143 So. 3d 546, 554 (Miss. 2014). If a document fails to sufficiently describe the land to be conveyed, it is unenforceable under the statute of frauds. Id. at 555. A land description is sufficient if a surveyor can locate the boundaries by following the description. Swartzfager v. Saul, 213 So. 3d 55, 63 (Miss. 2017); Overby v. Cavanaugh, 434 So.2d 1365, 1366 (Miss. 1983). If a land description contains inaccuracies, it may still be considered sufficient if the property could be located with some certainty. Id.

An examiner is not responsible for identifying a boundary defect, such as an encroachment or a survey conflict or error, that is not apparent from the instruments examined unless the examiner has other notice of the defect. Moreover, not all boundary defects are apparent from the record.

It is a cardinal rule in the construction of deeds that a deed will not be held void for uncertainty of description if by any reasonable construction it can be upheld. McLendon v. Ravesies, 173 So. 303 (Miss. 1937). In determining the legal sufficiency of a description, an examiner may presume that errors, irregularities, deficiencies, and inconsistencies in a land description in the chain of title are not material unless, under the circumstances, a substantial uncertainty exists as to the identity of the land or the description fails to satisfy the minimal requirements essential to an effective conveyance. When examining a marginally sufficient or questionable land description, the examiner should consider all relevant factors, including the lapse of time, subsequent conveyances, the manifest or typographical nature of an error or omission, and accepted rules of construction.

Where land is described by township, range, and section, so that it may be located with absolute certainty, it is of no importance whatsoever to the validity of the conveyance that the lands or a portion thereof are recited as lying in an incorrect county. Holliman v. Charles L. Cherry & Assocs., Inc., 569 So. 2d 1139 (Miss. 1990) (citing Morrison v. Casey, 34 So. 145 (Miss. 1903)).

While any title is only as good as the weakest link in the chain of descriptions, practical considerations justify reliance upon corrections or improved land descriptions appearing in later conveyances and upon the passage of time if no apparent difficulties have arisen from a less than perfect land description.

A person buying property is not called upon to investigate the title of lands other than that embraced in his deed or in the transaction which he is making if that title is clear and free upon the record. Clark v. Dorsett, 128 So. 79 (Miss. 1930). A loss from an incorrect description falls on the party who neglected to see that its description was proper if a third party acquires rights with reference to the property ignorant of the mistake. Id.

Where elements of the description conflict or where the calls do not close, the examiner may utilize rules of construction to construe descriptive calls that are conflicting or ambiguous. When evaluating metes and

bounds legal descriptions the “priority of calls” or “rules of dignity of calls” moves in the following priority hierarchy from most to least important:

1. Natural monuments (rivers, lakes, streams, trees, etc.).
2. Artificial monuments (fences, walls, houses, streets, ditches, etc.).
3. Courses (bearings).
4. Distances.
5. Acreage.

Natural monuments include rivers, lakes, streams, or trees; artificial monuments include such landmarks as fences, walls, houses, streets, or ditches. Moran v. Sims, 873 So. 2d 1067, 1070 (Miss. Ct. App. 2004).

In case of conflict between a monument and a call for courses or distances, courses and distances are controlled by and must yield to, monuments whether natural or artificial. Ball v. The City of Louisville, 56 So. 2d 4, 5 (Miss. 1952); Holcomb v. McClure, 52 So. 2d 922, 924 (Miss. 1951) (holding that when monuments and distances are both given the monuments control and the distances must be lengthened or shortened if necessary to prevent inconsistency).

In case of conflict between monuments, when a lot is in a platted subdivision, the plat will control over an erroneous monument. O’Herrin v. Brooks, 6 So. 844 (Miss. 1889) (holding that the call for the lot itself must prevail over any description, by courses, distances and over any calls for monuments because the lot itself is the prominent object). But see Duane v. Saltaformaggio, 455 So. 2d 753, 758 (Miss. 1984) (holding that in rare instances courses and distances should prevail over monuments if the monuments are incorrectly located and conflict with other primary subdivision markers).

“[T]he canons of construction for deeds make specific boundaries control over acreage and fractions of property.” Harrison v. Roberts, 989 So. 2d 930, 932 (Miss. Ct. App. 2008) (citing Estate of DeLoach v. DeLoach, 873 So. 2d 146, 153 (26) (Miss. Ct. App. 2004)).

Boundaries may be established by means other than through the calls recited in the instrument, including by express agreement, by the passage of time, or by the action or acquiescence of the parties.

Where a monument is a stream, street or highway, the conveyance extends to and passes the title of the grantor to the center thereof. Reynolds v. Refuge Planting Co., 97 So. 2d 101, 103 (Miss. 1957).

Caution:

A defective description is one of the most frequent causes of title failure. In general, courts construe land descriptions objectively, i.e., how the land was described in the instrument, and not subjectively, i.e., what the parties intended to describe in the instrument but did not. Thus, ordinarily, if the land description is unambiguous, the parties’ subjective intent not expressed in the instrument is of no consequence. Accordingly, the examiner should ascertain that the description in the instruments involved in a chain of title sufficiently describes the land so that it can be identified and located on the ground with reasonable certainty. If extrinsic evidence is necessary to determine the boundaries, then the descriptive words in the deed, or deeds, must furnish a basis or guide for its admission.

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Pocket Part to Edition 1
Changes effective August 1, 2021**

An examiner should be aware that it is not always easy to distinguish global or blanket descriptions, which are broadly construed, from Mother Hubbard or cover-all clauses that apply only to small strips of land.

Source:

Citations in the Comment. See also, Jack H. Ewing, Mississippi Land Descriptions, XVIII Miss. L.J. 381 (1947).

History:

Adopted effective as of August 1, 2019; [Comment updated August 1, 2021](#).

CHAPTER 6: CONVEYANCES INVOLVING CORPORATIONS

6.05 Authority of Particular Officers

Where a corporation is a named party to an instrument in the chain of title, an examiner may presume that the persons executing the instrument were the officers they purported to be and that such officers were authorized to execute the instrument on behalf of the corporation, if the instrument is executed in the proper form.

Comment:

The long-form acknowledgments for corporations and other business organizations set forth in Miss. Code Ann. § 89-3-7 provide that the person (officer) executing the instrument had been duly authorized to do so.

Caution:

The presumption of corporate authority applies to corporate officers and not to an attorney in fact. The examiner should look to the power of attorney to determine the authority of the attorney in fact. [For further information on attorneys in fact, see Standards 9.01 \(Validity of Instrument Executed by an Agent\) and 9.02 \(Recorded Powers of Attorney in Chain of Title\).](#)

Source:

Citations in the Comment; Title Standards Board.

History:

Adopted effective as of August 1, 2019; [Caution updated effective as of August 1, 2021.](#)

CHAPTER 8: CONVEYANCES INVOLVING LIMITED LIABILITY COMPANIES

8.02 Authority of Member, Manager, or Officer of Limited Liability Company

The examiner, in the absence of evidence to the contrary, may presume that a member of a member-managed limited liability company, a manager of a manager-managed limited liability company, or an officer of a limited liability company was authorized to act on behalf of the company if the member, manager, or officer, as applicable, executed the recorded instrument in the name of the limited liability company for apparently carrying on the business of the limited liability company.

Comment:

Manager is defined in Miss. Code Ann. § 79-29-105(p) as a person or persons who are named in or selected or designated pursuant to, the certificate of formation or operating agreement as a manager to manage the limited liability company to the extent and as provided in the certificate of formation or operating agreement.

Except where management of a limited liability company is vested in a manager, every member is an agent of the limited liability company for the purpose of conducting its business and affairs, and the act of any member, including, but not limited to, the execution in the name of the company of any instrument for apparently carrying on in the ordinary course the business or affairs of the company of which the person is a member, binds the company, unless the member so acting has, in fact, no authority to act for the company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority. Miss. Code Ann. § 79-29-307(1).

Every manager is an agent of the manager-managed limited liability company for the purpose of its business and affairs, and the act of any manager, including, but not limited to, the execution in the name of the company of any instrument for apparently carrying on in the ordinary course the business or affairs of the company of which the person is the manager, binds the company, unless the manager so acting has, in fact, no authority to act for the company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority. Miss. Code Ann. § 79-29-307(2).

Every officer is an agent of the limited liability company for the purpose of its business and affairs to the extent the agency authority has been delegated to the officer as provided by the operating agreement, and the act of any officer, including, but not limited to, the execution in the name of the company of any instrument for apparently carrying on in the ordinary course the business or affairs of the company of which the person is an officer, binds the company, unless the officer so acting has, in fact, no authority to act for the company in the particular matter and the person with whom the officer is dealing has knowledge of the fact that the officer has no such authority. Miss. Code Ann. § 79-29-307(3).

No act of a manager, member or officer in contravention of a restriction on authority shall bind the limited liability company to persons having knowledge of the restriction. Miss. Code Ann. § 79-29-307(4).

Source:

Citations in the Comment.

History:

Adopted effective as of August 1, 2019; [Comment updated effective as of August 1, 2021.](#)

CHAPTER 12: DECEDENT'S ESTATES

12.01 Passage of Title Upon Death

A decedent's property passes to his or her heirs at law or devisees (assuming the will is subsequently and properly admitted to probate) or to the grantee of a transfer on death deed immediately upon death, subject to payment of debts, including federal estate taxes.

Comment:

Title is vested immediately in the decedent's heirs at the time of death in the absence of a will. Miss. Code Ann. § 91-1-3; Beach v. State, 173 So. 429 (Miss. 1937); Parker v. Newell, 245 So. 2d 575, 576 (Miss. 1971). See also Tolbert v. Southgate Timber Co., 943 So. 2d 90 (Miss. Ct. App. 2006) (citing Moore v. Ware, 51 Miss. 206 (Miss. 1875)).

For decedents dying after July 1, 2020, a statutory "transfer on death deed" under the Mississippi Real Property Transfer-On-Death Act provides a means of passage of title at death other than by intestate succession or by will. See Miss. Code Ann. § 91-27-1 et seq. Such a deed must be filed for record before the grantor's death and is revocable and subject to any conveyance or encumbrances on the part of the grantor until the grantor has died. See Standard 12.11 (Transfer on Death Deed).

The Mississippi Uniform Disclaimer of Property Interests Act (2002/2010) allows the beneficiary of property passing by various means, including inheritance or devise, to disclaim it. See Miss. Code Ann. § 89-22-1 et seq. The examiner should be alert to this possibility, which results in the property's passing as though the disclaiming beneficiary had predeceased the decedent.

Miss. Code Ann. § 91-29-1 through 91-29-9 provides for revocation of transfers to a former spouse, whether by will, trust, or beneficiary designation. The examiner should be alert to this possibility, which results in the property's passing as though the former spouse failed to survive the testator.

Caution:

If a will of the decedent is later found and successfully probated, then the property may revert into the devisees under the will. If no will is found and successfully probated, then the title will remain with the intestate heirs as determined pursuant to laws of descent and distribution. Va. Tr. Co. v. Buford, 86 So. 356 (Miss. 1920), suggestion of error overruled, 86 So. 516 (1920). Thus, any conveyance of a decedent's real property must be given special care to ensure that the proper parties are conveying the property and that estate requirements have been met.

See discussion in Caution to Standard 12.02 (Estate Proceedings) regarding the effect of failure to probate will in Mississippi resulting in will not being effective "as an instrument of title."

Source:

Citations in the Comment and Caution.

History:

Adopted effective as of August 1, 2019; [Standard and Comment updated effective as of August 1, 2021.](#)

12.04 Conveyances by an Executor or Administrator – With Court Authority

Before accepting a deed from an executor or administrator, an examiner should be satisfied that the executor or administrator was properly appointed and obtained an order authorizing the sale of real property where:

(a) the sale of the real property is in preference to the personal property and is in the best interest of the distributees or legatees;

(b) the decedent had, during his/her lifetime, executed an enforceable option contract for the sale of the subject property, and the executor's or administrator's deed was given to fulfill the same;

(c) the personal property of the decedent's estate will not be sufficient to pay the debts and expenses of the estate; or

(d) an order of insolvency has been entered with respect to the decedent's estate, and the Court has approved the sale of the real property to pay debts of the estate.

Comment:

If the will does not contain a testamentary power of sale in favor of the executor or administrator or does not specifically direct the sale of real property by the executor or administrator, then the executor or administrator may not sell real property without a court order. There are four situations in which an executor or administrator may petition the court for an order authorizing the sale of real property:

- pursuant to Miss. Code Ann. § 91-7-187 authorizing the sale of land, with due consideration given to the interests of the distributees, in preference to the personal property;
- pursuant to Miss. Code Ann. § 91-7-189 authorizing the sale of land if a decedent had purchased land prior to his death and died before completing payment for it and the decedent's personal property is not sufficient to pay the debt;
- pursuant to Miss. Code Ann. § 91-7-191, if the executor or administrator determines that the personal property will not be sufficient to pay the debts and expenses of the estate; and
- pursuant to Miss. Code Ann. § 91-7-261, if the executor or administrator determines that both the real and personal property will be insufficient to pay the debts of the estate.

All parties in interest must be cited by summons or publication. Miss. Code Ann. § 91-7-197; Turner v. Hightower's Estate, 417 So. 2d 919 (Miss. 1982). A decree ordering lands sold without notice to the parties in interest is void. Eastman Gardiner Lumber Co. v. Carr, 166 So. 401 (Miss. 1936); Miss. Code Ann. § 91-7-205. However, if all parties in interest join in the petition so that the matter may proceed *ex parte* then notice is not necessary. The court may require the proceeds from the sale of land to be held in trust by the executor or administrator. Miss. Code Ann. § 91-7-205.

The effect of an order authorizing the sale of land is to divest the heirs and devisees of their title to the real property and place it with the executor or administrator. McWilliams v. Brown's Estate, 183 So. 2d 820 (Miss. 1966); Brown v. McAfee, 421 So. 2d 1061 (Miss. 1982). Therefore, where an executor or administrator conveys

title pursuant to a court order, the heirs of the decedent need not join the executor or administrator in the execution of the conveyance. Miss. Code Ann. § 89-1-67 (providing the statutory form of conveyance to be executed by an executor or administrator selling land under a decree). However, all parties in interest (devisees or heirs) must be cited by summons or publication. Miss. Code Ann. § 91-7-197 (requiring all parties interested shall be cited by summons or publication); Miss. Code Ann. § 91-7-261 (requiring the devisees or heirs to be made parties to the proceeding); Eastman Gardiner Lumber Co., 166 So. At 401 (finding a decree ordering lands sold without notice to the parties in interest to be void). Whenever an executor or administrator sells land pursuant to a decree, the executor or administrator must execute a bond in an amount equal to the proceeds of the sale of the land, unless waived by the court. Miss. Code Ann. § 91-7-205. All proceeds from a sale by the executor or administrator with a court order are proceeds of the estate and must be paid into the estate unless the court order directs otherwise.

Caution:

If a petition for an order authorizing the sale of real property under Miss. Code Ann. § 91-7-191 does not specifically allege that the personal property is insufficient to pay the debts, then any sale pursuant to the order is void. McWilliams v. Brown's Estate, 183 So. 2d 820, 822 (Miss. 1966) (finding that compliance with the statute is necessary to divest title to real property out of the devisees or heirs and vest the same in the executor or administrator).

Unless waived by the court, failure to execute a bond to protect the estate with respect to the funds realized on the sale of the land is sufficient to render the sale void. Sharpley v. Plant, 79 Miss. 175, 28 So. 799 (1900).

Source:

Citations in the Comment and Caution.

History:

Adopted effective as of August 1, 2019; Caution updated effective as of August 1, 2021.

12.06 Estate Debts and Taxes

Property of a decedent, if not exempt, passes subject to unpaid debts and taxes of the estate. Therefore, an examiner should determine whether any unpaid debts and taxes have been paid or have become barred by limitations.

Comment:

Property of a decedent passes subject to unpaid debts and taxes of the estate, and the examiner should determine whether any exist.

Absent information to the contrary, an examiner may rely upon the affidavit of an executor, administrator, or another person who has knowledge of the facts that all debts of the estate have been paid. As evidence that an estate is not large enough to incur federal estate taxes, an examiner may rely upon a court-approved inventory, or in the absence of an inventory, the affidavit of a person who has knowledge of the facts.

An examiner may accept, as proof that debts and taxes have been paid, an order closing a court-supervised administration or an affidavit closing an independent administration. If federal estate taxes are due,

the satisfaction of the taxes may be proven by a Federal Estate and Generation-Skipping Transfer Tax Closing Letter together with proof of payment of the taxes shown by the letter to be due to the United States.

An examiner may not accept an order of the court probating a will as a muniment of title as evidence that the real property under examination is free of all obligations of the estate other than debts secured by liens on the real property and as evidence that administration is not otherwise necessary, unless three years and ~~six months~~ ninety days have passed since the date of the death.

A lien for federal estate taxes attaches to the gross estate of a decedent as of the date of death and, in general, exists for a period of ten years. 26 U.S.C. § 6324. There is no requirement for filing the notice in the county records.

The State of Mississippi does have an estate tax. See Section 16.01 (Liens, Generally). See also, Miss. Code Ann. §§ 27-9-35, -37, -41.

Most relatively simple estates (cash, publicly traded securities, small amounts of other easily valued assets, and no special deductions or elections, or jointly held property) do not require the filing of a federal estate tax return. A filing is required for estates with combined gross assets and prior taxable gifts exceeding \$1,500,000 in 2004 - 2005; \$2,000,000 in 2006 - 2008; \$3,500,000 for decedents dying in 2009; and \$5,000,000 or more for decedent's dying in 2010 and 2011 (note: there are special rules for decedents dying in 2010); \$5,120,000 in 2012, \$5,250,000 in 2013, \$5,340,000 in 2014, \$5,430,000 in 2015, \$5,450,000 in 2016, \$5,490,000 in 2017, and \$11,180,000 in 2018. Any unused estate tax exemption of a married person who died in 2011 or later can be transferred to the surviving spouse under a concept commonly called "portability." 26 U.S.C. § 2010(c).

If estate taxes are due and have not been paid, the District Director of the Internal Revenue Service has the authority to release the lien upon being furnished a bond conditioned on the payment of the tax. U.S. Treas. Reg. 301.6325-1(a)(2). Similarly, the District Director may release the lien if the fair market value of the remaining property is at least double the amount of the outstanding tax plus all prior liens against the property. U.S. Treas. Reg. 301.6325-1(b)(1). Other release authority is set out in U.S. Treas. Reg. 301.6325-1. A federal estate tax lien is divested regarding property sold under court order to pay debts and administration expenses. 26 U.S.C. § 6324(a)(1).

Source:

Citations in the Comment.

History:

Adopted effective as of August 1, 2019; Comment updated effective as of August 1, 2021.

12.08 Wills as a Muniment of Title

An examiner may rely upon an order admitting a will as a muniment of title only, so long as the order is filed of record in the county in which the real property is located and three (3) years and ninety (90) days have passed since the date of the death of the decedent.

Comment:

When a person dies testate owning real property in Mississippi, and his or her will purports to devise such property, the will may be admitted to probate as a muniment of title only.

Prior to July 1, 2020, this was accomplished by a petition signed and sworn to by all beneficiaries named in the will, and the spouse of the deceased person if he or she is not named as a beneficiary. The appointment of an executor or administrator with the will annexed is not necessary, if it is shown in the petition that: (a) the value of the decedent's personal estate in Mississippi at the time of his or her death, exclusive of any interest in real property, did not exceed \$10,000, exclusive of exempt property; and (b) all known debts of the decedent and his or her estate, including estate and income tax, have been paid. Miss. Code Ann. § 91-5-35.

After July 1, 2020, this is accomplished by a petition signed and sworn to by personal representative (e.g., an executor, an administrator with the will annexed, or other personal representative in a foreign jurisdiction), or if there is no such personal representative, then by the spouse of the deceased person, if living, and all devisees of the Mississippi real property, excluding devisees with a mere contingent remainder interest. The appointment of an executor or administrator with the will annexed is not necessary, if it is shown in the petition that: (a) the value of the decedent's personal estate in Mississippi at the time of his or her death, exclusive of any interest in real property, did not exceed \$75,000, exclusive of exempt property; and (b) all known debts of the decedent and his or her estate, including estate and income tax, have been paid. Miss. Code Ann. § 91-5-35.

Caution:

While the muniment of title does establish the devisees of the real property, it does not cut off the claims of creditors of the deceased, address Medicaid recovery, or inheritance tax or estate tax.

Source:

Citations in the Comment.

History:

Adopted effective as of August 1, 2019; Comment updated effective as of August 1, 2021.

12.10 Foreign Wills

The probate of a will in another state has no effect on real property in Mississippi. An examiner should not rely upon a will made and probated in another state unless the will has been admitted to probate by a Mississippi Chancery Court.

Comment:

The estate of a non-resident decedent which contains real property must be probated or administered (i) by ancillary proceedings pursuant to Miss. Code Ann. § 91-7-501 through 91-7-523, or (ii) by proceeding to determine heirship under Miss. Code Ann. § 91-1-27, -29.

A foreign will is one probated outside of Mississippi in any of the United States, its territories, the District of Columbia, or any foreign nation. Prior to July 1, 2020, the aAdministration of an estate in Mississippi iwas not ancillary to the administration of the same estate in a foreign jurisdiction. Wilson's Estate v. Nat'l Bank of Commerce, 364 So. 2d 1117, 1122 (Miss. 1978); Carroll v. McPike, 53 Miss. 569, 577 (Miss. 1876).

A will made and probated in a foreign state has no effect as a conveyance as to property in Mississippi until the same is probated, but when probated will relate back to testator's death and be given effect unless the

property has been acquired in good faith for value by a person without notice of the existence of the will. Belt v. Adams, 125 Miss. 387 (Miss. 1921).

Caution:

Administration of the estate of the non-resident administered in the court of his residence has no effect on the claims of creditors in Mississippi. Buckingham Hotel Co. v. Kimberly, 103 So. 213 (Miss. 1925) (finding disallowance of a claim by a Missouri court did not bar allowance of the same claim in Mississippi probate proceedings). All creditors, no matter where they reside, nor where the debts were contracted, are entitled to prove their claims in Mississippi and proceed in Mississippi courts to enforce them, and to share in the assets in Mississippi. *Id.*

Source:

Citations in the Comment and Caution.

History:

Adopted effective as of August 1, 2019; Comment updated effective as of August 1, 2021.

12.11 Transfer on Death Deed

An examiner should determine whether a Transfer on Death Deed has become effective and is not subject to outstanding claims against the estate of the deceased grantor of the deed.

Comment:

A growing number of states have enacted statutes creating an asset-specific procedure for the nonprobate transfer of real property. Mississippi has adopted the “Mississippi Real Property Transfer-On-Death Act.” See Miss. Code Ann. § 91-27-1 et seq. This chapter creates the Transfer on Death Deed (commonly known as a “TODD”) that was not recognized under prior law and applies to a TODD that is executed and acknowledged on or after July 1, 2020. Miss. Code Ann. § 91-27-5. A TODD is a deed authorized under Chapter 27, and this chapter does not apply to any other deed that transfers an interest in real property on the death of an individual—e.g., a deed that transfers title but reserves a life estate. Miss. Code Ann. § 91-27-3(f). A TODD must state that the transfer of an interest in real property to the designated beneficiary is to occur on the transferor’s death and must be recorded before the transferor’s death in the land records of the county in which the real property is located. Miss. Code Ann. § 91-27-17. The Mississippi Real Property Transfer-On-Death Act includes an optional form of TODD and revocation of TODD. Miss. Code Ann. § 91-27-33, Miss. Code Ann. § 91-27-35.

An examiner must determine whether a grantor of a TODD is deceased. An examiner should recommend evidence of the death be recorded, such as an affidavit of heirship or death.

To the extent the estate of the transferor is insufficient to satisfy a claim against the estate, estate tax, expenses of administration, or allowance, the personal representative may enforce that liability against the real property transferred at the transferor’s death by a TODD. A proceeding to enforce such liability must be commenced no later than three years and ninety days after the transferor’s death, except for a mortgage or other lien treated as a matured secured claim. Miss. Code Ann. § 91-27-29.

During a transferor’s life, a TODD does not: (1) affect the interest or right of the transferor or any other owner, including the right to transfer or encumber the real property, homestead rights in the real property, and

ad valorem tax exemptions; (2) affect an interest or right of a transferee of the real property that is the subject of the deed, even if the transferee has actual or constructive notice of the deed; (3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed; (4) create a legal or equitable interest in favor of the designated beneficiary; or (5) subject the real property to claims or process of a creditor of the designated beneficiary. Miss. Code Ann. § 91-27-23.

A TODD is void as to any interest in real property that is conveyed by the transferor during the transferor's lifetime after the TODD is executed and recorded if (1) a valid instrument conveying the interest is recorded in the deed records of the county clerk's office in the county in which the TODD is recorded; and (2) the recording of the instrument occurs before the transferor's death. Miss. Code Ann. § 91-27-25. A TODD is revocable regardless of whether the deed or another instrument contains a contrary provision. Miss. Code Ann. § 91-27-11. The capacity to make or revoke a TODD is the same as the capacity required to make a contract, but a TODD may not be created through use of a power of attorney unless specifically authorized in the power of attorney. Miss. Code Ann. § 91-27-15. A beneficiary of a TODD takes the real property subject to all conveyances, encumbrances, mortgages, liens, and other interests to which the real property is subject at the transferor's deed. Miss. Code Ann. § 91-27-29. The beneficiary of a TODD may disclaim all or part of the designated beneficiary's interest. Miss. Code Ann. § 91-27-31. If a designated beneficiary predeceases or does not survive the transferor, the share of that beneficiary lapses. Miss. Code Ann. § 91-27-27.

An instrument is effective to revoke a recorded TODD, or any part of it, if the instrument: (1) is a subsequent TODD that revokes the preceding TODD expressly or by inconsistency, or an instrument of revocation that expressly revokes the TODD or part of the deed; (2) is acknowledged by the transferor after the acknowledgment of the deed being revoked; and (3) is recorded before the transferor's death in the deed records in the county clerk's office in the county where the TODD being revoked is recorded. Miss. Code Ann. § 91-27-21. A will may not revoke or supersede a TODD. Id. A final judgment of the court dissolving the marriage of the transferor and the beneficiary after the transfer on death deed is recorded operates to revoke the transfer on death deed as to that beneficiary if notice of the judgment is recorded before the transferor's death in the deed records in the county clerk's office in the county where the TODD is recorded. Id. If a TODD is made by more than one transferor, revocation by one transferor does not affect the deed as to another transferor who does not make a revocation. Id. A TODD made by joint owners with right of survivorship is revoked only if revoked by all living joint owners. Id.

Caution:

See Standard 15.02 (Homestead) for discussion on the need to require joinder of both spouses unless it is determined that the property is not, or is no longer, homestead or an exception to the spousal joinder requirement applies.

Source:

Citations in the Comment and Caution.

History:

Adopted effective as of August 1, 2021.

CHAPTER 14: AFFIDAVITS AND RECITALS

14.01 Affidavit Defined

An affidavit is a written statement of fact, under oath or affirmation, signed by an individual with personal knowledge before a person authorized by law to administer such oath or affirmation.

Comment:

Affidavits are used to attest to facts that clarify issues raised by the record regarding a particular parcel. Affidavits are permitted to be recorded provided they relate to the identification, marital status, heirship, relation, or date or time of death of a person who is a party to an instrument affecting title to real property, or the identification of a legal entity who is a party to an instrument affecting title to real property. Miss. Code Ann. § 89-5-8(1).

Affidavits are also permitted to be recorded by a non-titled spouse in lieu of joining the titled spouse in executing a conveyance for the purpose of confirming voluntary abandonment or voluntary separation. Miss. Code Ann. § 89-5-8(3). See Comments to Standard 15.02 (Homestead) for discussion on Affidavits of Non-Homestead.

Both form and function play an important role in determining the sufficiency of an affidavit. When preparing an affidavit to be used in real property transactions for purposes of clarifying an issue on the record, the following structure, while not required, is customary and encouraged:

Affiant: The name of the affiant should be inserted in the introductory paragraph.

Legal Description: From and after July 1, 2021, for an affidavit to be recorded, it must include a description of the real property covered by the affidavit. Miss. Code Ann. § 89-5-8(5). It is recommended that the legal description, if necessary, be described in the first numbered paragraph – either directly or by reference to an attached exhibit – as it is of prime importance in a real property transaction. Because the description of the affiant may take several averments or some of the provided language may change on a case by case basis, placing the legal description in the first numbered paragraph will ensure that it is not affected by subsequent paragraphs of the affidavit and ensures it is more easily picked up by abstractors.

Description of Affiant: The description of the affiant and relationship to the real property should be included as part of the averments in order to tie the affiant to the transaction. If the affiant is an individual, then the affiant should aver that they are signing on personal knowledge. If the affiant is acting in a fiduciary capacity, then the affiant should aver that they are signing on personal knowledge and on behalf of the principal.

Averments: The next numbered paragraphs on the affidavit should include all averments necessary to clarify the issue on the record.

Execution: The affidavit must be executed in front of the notary. The name of the affiant should be printed below the signature line. If the affiant is also a fiduciary, his/her capacity and name of the principal should also be inserted. Because affidavits are signed on personal knowledge, the description of the affiant's capacity should not be prefixed by the word "as."

Verification upon oath or affirmation ~~jurat~~: Following the signature, the venue where the notary is signing the verification upon oath or affirmation ~~jurat~~ (also known as a “verification upon oath or affirmation ~~jurat~~”) should be stated. The name of the affiant should be printed following the capacity, if any, and the name of the principal, if any. Again, the description of the affiant’s capacity should not be prefixed by the word “as.”

Notary Signature and Seal: The notary must sign their name, complete the blank spaces below the signature and place the notary seal. Always check that the commission has not yet expired.

An “acknowledgment” is a formal statement by the person executing (signing) a document, affirming that he executed the document as his free act and deed. The statement – acknowledgment – is made in the presence of an official authorized to “take acknowledgments,” such as a notary public, who then completes and signs an “acknowledgment.” An acknowledgment is generally required to allow a document to be filed in the real property records.

A “verification upon oath or affirmation ~~jurat~~ (also known as a “verification upon oath or affirmation ~~jurat~~”) is a certificate signed by an officer authorized to administer oaths before whom an instrument was executed, stating that the instrument was subscribed and sworn to before the officer by the person executing the instrument. In a verification upon oath or affirmation ~~jurat~~, a notary certifies that a signer declared under oath or affirmation that the content of the signed document is true and was signed in the notary’s presence. An affidavit must contain a verification upon oath or affirmation ~~jurat~~ to be effective.

The standard form of a verification upon oath or affirmation is as follows:

Signed and sworn to (or affirmed) before me this (date) by (name(s) of individual(s) making statement).

(Notary Stamp)

Notary Public

My Commission Expires: _____

Prior to July 1, 2021, an acknowledgment was required in order for an affidavit to be recorded. As of that date, an affidavit need only contain a verification upon oath or affirmation to be recorded.

For a listing of notarial officers who may ~~administer oaths and supply a jurat~~perform a notarial act, see Miss. Code Ann. § 25-34-11.

Caution:

An instrument containing an acknowledgment, but not a verification upon oath or affirmation ~~jurat~~, is not an affidavit since the facts stated therein are not sworn to by the affiant.

Source:

Citations in the Comment. See also 1-5 Miss. Code R. § 1.10, which defines “jurat” to mean a notarial act in which an individual at a single time and place: (a) appears in person before the notary and presents a document; (b) is personally known to the notary or identified by the notary through satisfactory evidence; (c) signs the document in the presence of the notary; and (d) takes an oath or affirmation from the notary vouching for the truthfulness or accuracy of the signed document.

History:

Adopted effective as of August 1, 2019; [Comment and Caution updated effective as of August 1, 2021.](#)

CHAPTER 15: MARITAL INTERESTS

15.01 Divorce

A judgment of divorce which purports to divest one party of title to the subject property, should be examined to ensure that said judgment (1) is final, non-appealable, (2) contains express language to divest title from one party and revest in another, and (3) contains a sufficient legal description of the subject property.

Comment:

Upon dissolution of a marriage, the chancery court has the discretion to divide real and personal property, including the divesting of title, and may consider awarding future interests to be received by each spouse. Ferguson v. Ferguson, 639 So. 2d 921, 929 (Miss. 1994). The chancellor in a divorce case now has the authority to divest title from one spouse, and vest it in the other spouse, when equitably dividing the marital assets. Draper v. Draper, 627 So. 2d 302, 305 (Miss. 1993).

Caution:

When a property settlement agreement (“PSA”) is used by the parties to settle property rights, they normally list all of their property and then prepare a list of property that each is to receive. Following the list of property that one party is to receive, the other party may use granting or conveyancing language such as “does hereby grant, bargain, and sell” such property to the receiving spouse. In such a case, the agreement itself may be relied upon to divest title and a deed is not necessary provided such agreement, and the judgment to which it is incorporated, is filed of record.

In some cases, the parties may enter into a PSA and schedule the property that each is to receive with a provision that each party will execute all necessary instruments to carry out the PSA. In such cases, the PSA alone is not effective to convey title and a separate deed must be properly executed and filed of record in order to divest title.

For the division of marital property to be accomplished by judgment of divorce, the judgment must be duly recorded in the official land records and should sufficiently identify the property (by valid legal description) that each party is to receive and include wording similar to: “It is therefore ordered adjudged and decreed by the Court that title to such property is hereby divested from ... and vested in ...”. If title is vested and divested in this manner, it is not necessary that the parties execute deeds.

Miss. R. Civ. P. 70 provides that if a judgment directs the conveyance of land or delivery of deeds and the party so directed fails to comply within the time specified, the court may direct that the act be done at the cost of the disobedient party by some person appointed by the court. However, Rule 70 applies only (a) after a judgment is entered, and (b) if the judgment directs a party to execute a conveyance of land or to deliver deeds and the party has failed to comply within the time specified. Comment to Miss. R. Civ. Pro. 70.

An award of Mississippi real property in a foreign divorce or other civil action must be properly domesticated in Mississippi and proper proceedings instituted thereon. See Miss. Code Ann. § 11-7-303. After establishing personal jurisdiction over a party, a foreign state court may compel that party to act with respect to Mississippi lands by way of that court’s contempt power.

Source:

Citations in the Comment and Caution; Title Standards Board.

History:

Adopted effective as of August 1, 2019; [Caution updated effective as of August 1, 2021](#).

15.02 Homestead

If the property conveyed is or may be the homestead of married persons, an examiner must require the joinder of both spouses unless it is determined that the property is not, or is no longer, homestead or an exception to the spousal joinder requirement applies.

Comment:

This Standard is intended to apply to the preparation of an instrument for the current transaction. Unless an examiner has actual or constructive knowledge that the property was homestead in a prior transaction, the examiner is not required to verify the status of homestead at the time of prior conveyances.

There are five (5) exceptions to the spousal joinder requirement:

(1) *Non-owner-Occupied Property*. The property is not an owner-occupied residence as evidenced by either (a) a statement that no part of the property, or any adjacent land, constitutes the grantor's homestead, or (b) the lack of a declaration of homestead covering the property filed of record pursuant to Miss. Code Ann. § 85-3-29 or the fact that property is not assessed as the grantor's homestead (coupled with evidence that the grantor maintains another property as their homestead).

(2) *Purchase Money Mortgages*. A deed of trust given to secure funds used to purchase a homestead is valid without the non-titled spouse's signature. Jarvis v. Armstrong, 48 So. 1 (Miss. 1909). Likewise, a titled spouse's deed of trust to secure payment of a debt for money advanced to the titled spouse for the construction of a house converted into a homestead is valid without the non-titled spouse's signature. *Id*; see also In re Burks, 421 B.R. 762 (Bankr. N.D. Miss. 2009) (finding a second lien deed of trust invalid where non-titled spouse failed to join the execution thereof and the proceeds were non-purchase money in nature). It should be noted that *this exception does not apply* where the grantor already owns the property and resides on it at the time the deed of trust is signed. In re Rhymes, No. 0553572ERG, 2008 WL 723975, at *4 (Bankr. S.D. Miss. Mar. 14, 2008).

(3) *Inter-spousal Conveyances*. One spouse conveys to another spouse his or her interest in homestead property. Ward v. Ward, 517 So. 2d 571, 573 (Miss. 1987); see also Miss. Code Ann. § 89-1-29; Williams v. Green, 91 So. 39, 40 (Miss. 1922) (recognizing the general rule that "[i]n jurisdictions requiring conveyances or mortgages of homestead property to be executed by both husband and wife, the husband may make a valid conveyance, or according to some decisions, mortgage of the homestead premises to his wife, without her joining").

(4) *Separated Spouses, Living Apart*. If a married couple is separated and not living together, and the non-titled spouse voluntarily leaves the homestead with no intent to return, then a conveyance, mortgage, deed of trust or other encumbrance executed thereafter by the titled spouse is valid though not signed by the non-titled spouse. Sylvester v. Stevens, 191 So. 483 (Miss. 1939) (finding that if a spouse voluntarily separates from the other and abandons the intention of living with him or her through no fault of the latter, he or she has abandoned any homestead rights); Lewis v. Ladner, 172 So. 312 (Miss. 1937) (finding that abandonment of

homestead may be obtained by a free and voluntary separation of the parties); Bd. of Mayor and Alderman of Town of Booneville v. Clayton, 124 So. 490 (Miss. 1929); Philan v. Turner, 13 So. 2d 819, 821 (Miss. 1943) (finding the test to be whether “the husband was away from the homestead with the mature intention not to return to it”).

(5) *Voluntary Abandonment*. If a titled spouse acts in good faith to adopt a new homestead and not to deprive the non-titled spouse of any of the non-titled spouse’s homestead rights which the non-titled spouse had when residing in the homestead, the titled spouse may move the family from their homestead, which thereupon loses its character as such, to a new homestead. Biglane v. Rawls, 153 So. 2d 665, 668 (Miss. 1963) (“the husband, as head of the family, has the right to select the homestead, and the wife is bound by his selection, if it is made in good faith and not for the purpose of defeating her rights”); see also Grantham v. Ralle, 158 So. 2d 719, 724 (Miss. 1963); Livelar v. Kepner, 146 So. 2d 346, 349-50 (Miss. 1962).

Caution:

A conveyance, mortgage, deed of trust or other encumbrance upon a homestead exempted from execution shall not be valid or binding unless signed by the spouse of the owner if the owner is married and living with the spouse. Countrywide Home Loans, Inc. v. Parker, 975 So. 2d 233, 234 (Miss. 2008) (finding the deed of trust on homestead property null and void due to failure of the non-titled spouse to sign the deed of trust as required by Miss. Code Ann. § 89-1-29). The validity of the deed of trust is judged by the circumstances existing at the time of its execution. Craddock v. Brinkley, 671 So. 2d 662, 665 (Miss. 1996) (citing Hughes v. Hahn, 46 So. 2d 587 (Miss. 1950)). Subsequent actions by the spouse who failed to join in the execution cannot cure the invalidity of the instrument. Welborn v. Lowe, 504 So. 2d 205, 206 (Miss. 1987).

Exceptions 4 and 5 are fact-based exceptions. Because it is impossible to determine at a later date whether the homestead was abandoned by the non-titled spouses, these exceptions must be supported by an affidavit duly executed by the non-titled spouse and recorded in the chain of title with the conveyance, mortgage, deed of trust, or other encumbrance executed by the titled spouse. Miss. Code Ann. § 89-5-8(3).

For a sample form, see Form 21.04 (Sample Form of Affidavit of Non-homestead).

See Caution to Standard 9.01 (Validity of Instrument Executed by an Agent) regarding the prohibition on spouse serving as an agent in a power of attorney used to convey, mortgage, or otherwise encumber homestead property.

Source:

Miss. Code Ann. § 89-1-29; Citations in the Comment and Caution.

History:

Adopted effective as of August 1, 2019; Caution updated effective as of August 1, 2021.

CHAPTER 16: JUDGMENT LIENS

16.01 Judgment Liens

The examiner should identify all enrolled judgments affecting the title under examination.

Comment:

An examiner should identify potentially enforceable liens evidenced by an enrolled judgment or abstract thereof and advise the client as appropriate to the circumstances of the examination. Typically, an examiner will require that any lien evidenced by an enrolled judgment or abstract thereof be released.

Creation. Entry of a judgment alone does not create a judgment lien. For a judgment lien to arise, the judgment must be enrolled on the judgment roll. Miss. Code Ann. § 11-7-189. Circuit court judgments are automatically enrolled on the judgment roll in the county where the judgments are originally rendered. Id. The clerk of the circuit court must, within 20 days of the adjournment of the court, enroll all final judgments rendered during the term of the circuit court on "The Judgment Roll". ~~Miss. Code Ann. § 11-7-189.~~ Id. To become a judgment lien, an abstract of judgments of other Mississippi courts – even those that are in the same county – must be filed with the Circuit Clerk's office and enrolled on the judgment roll. Miss. Code Ann. § 11-7-197.

Priority. An enrolled judgment lien has priority according to the order of enrollment in favor of the judgment creditor against the judgment debtor and all persons claiming property under him. Miss. Code Ann. § 11-7-191.

Foreign Judgments. A judgment rendered or enrolled in one county (or judicial district) does not constitute a lien upon or bind any property of the judgment debtor in another county until a certified abstract of the judgment or decree is enrolled by the clerk of the circuit court in the foreign county. Miss. Code Ann. § 11-7-191 (a judgment operates as a lien only in the district or districts in which it is enrolled); Miss. Code Ann. § 11-7-195. To create an enforceable judgment lien in a foreign county, the certified abstract must contain the (1) names of all the parties to such judgment or decree, (2) its amount, (3) the social security or tax identification number of the defendant if such information is known or readily ascertainable, (4) the date of the rendition, and (5) the amount appearing to have been paid thereon, if any. Miss. Code Ann. § 11-7-195.

Duration. A judgment lien remains in effect until it becomes unenforceable by payment in full or seven (7) years from the date of rendition, unless an action is brought on the judgment before the expiration of such time or execution of the judgment is otherwise stayed or enjoined. Miss. Code Ann. § 89-5-19.

Renewal. Judgments may be renewed for another seven-year period if re-filed within 6 months of the expiration of the initial seven-year period.

Proper Indexing. In order to create a valid judgment lien against multiple judgment debtors, the abstract of judgment must be indexed under the names of all judgment debtors. Hughes v. Lacock, 63 Miss. 112 (1885) (finding that the enrollment of a judgment against two persons under the letter of the name of only one of the judgment debtors does not bind the property of the other).

Purchase Money Exception. A deed of trust given at the time of the purchase of real estate to secure the payment of the purchase price will be entitled to a preference over all judgments and other debts of the mortgagor. Miss. Code Ann. § 89-1-45. This preference is available regardless whether the deed of trust is in favor of the seller or a third-party lender but extends only to the land purchased. Id.

Release. Once enrolled, only a judgment creditor or its attorney can remove the judgment from the judgment roll. Miss. Code Ann. § 11-7-189(2); Fitch v. Valentine, 946 So. 2d 780, 785 (Miss. 2007).

Caution:

In Mississippi, an enrolled judgment lien follows the property. Miss. Code Ann. § 11-7-191 (e.g., is a lien upon the property in favor of the judgment creditor against the judgment debtor and all persons claiming the property under him after rendition of the judgment). Anyone that purchases property on which there is an enrolled judgment lien holds it subject to the right of the judgment creditor to have it seized under a writ of execution for the satisfaction of the judgment. TXG Intrastate Pipeline Co v. Grossnickle, 716 So.2d 991, 1020 (Miss. 1997) (quoting Motors Securities Co. v. B.M. Stevens Co., 83 So. 2d 177, 179 (1955)).

Judgment liens in favor of the United States are effective for twenty years and may be extended with the same priority another twenty years. 28 U.S.C.A. § 3201.

Source:

Citations in the Comment.

History:

Adopted effective as of August 1, 2019; Comment and Caution updated effective as of August 1, 2021.

CHAPTER 17: DEEDS OF TRUST AND OTHER VOLUNTARY LIENS

17.04 Corrective or Re-Recorded Instruments – Assignment or Release of

Generally, each instrument of record evidencing a lien or encumbrance must be described in an assignment or release thereof. However, when an instrument referencing a lien or encumbrance appears in the chain of title, followed by a similar instrument in which it is stated on the face of the instrument that the latter instrument is given to correct some defect in the former instrument, or when it appears on the face of the latter instrument that it evidences the identical lien or encumbrance as the former instrument and is merely a re-recording of the former instrument, an examiner may presume that an assignment or release of either the latter or former instrument, which does not specifically describe the other, is sufficient to assign or release said lien or encumbrance.

Comment:

Deeds of trust are often re-recorded to correct clerical or scrivener's errors. The re-recording of a deed of trust does not alter, amend or otherwise change the obligations of the borrowers under the deed of trust. Historically, deeds of trust were released by marginal notation, which clearly indicated the lender's intention to release the deed of trust as recorded, and as re-recorded, since the notation of release was on the original instrument. Now, lenders more frequently record releases of deeds of trust by separate instrument. Those separate instruments may, in error, fail to reference the original book and page of recording of the deed of trust and/or the books and pages of any re-recordings thereof. Such defects in releases of deeds of trust being made by separate instruments do not cause the subject real property to be considered unmarketable and an examiner may omit from his opinion reference to any such rerecorded deed of trust if: (a) a release of deed of trust by separate instrument correctly references either the book and page (or instrument number) of the recording or of any re-recording thereof, and (2) such release was recorded after all re-recordings of the deed of trust.

Caution:

If a release of a previously filed deed of trust is filed contemporaneously with a re-recorded deed of trust, then the re-recording of the deed of trust may constitute an attempt by the lender to assert a deed of trust canceled in error, and in such an instance the re-recorded deed of trust should still be identified as an encumbrance against the real property.

Effective July 1, 2021, a document may not be recorded unless it contains an original signature. Miss. Code Ann. § 89-3-1.

Source:

Title Standards Board.

History:

Adopted effective as of August 1, 2019; Caution updated effective as of August 1, 2021.

CHAPTER 18: FEDERAL AND STATE TAX LIENS

18.04 State Tax Liens

The examiner should determine whether the land under examination is subject to any state tax liens.

Comment:

Various state tax liens may constitute a claim against a taxpayer's property. These include an income tax lien (Miss. Code Ann. § 27-7-55), estate tax lien (Miss. Code Ann. § 27-9-35), corporate franchise tax lien (Miss. Code Ann. § 27-13-29), sales tax lien (Miss. Code Ann. § 27-65-57), tobacco tax lien (Miss. Code Ann. § 27-69-41), and alcoholic beverage tax lien (Miss. Code Ann. § 27-71-~~3323~~).

State tax liens are perfected and attach to all property and all rights to property belonging to the debtor, both real and personal, tangible and intangible, located in any and all counties within the state upon enrollment of a notice of tax lien in the state tax lien registry. Miss. Code Ann. § 85-11-9(1). State tax liens are valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of enrollment in the tax lien registry. Miss. Code Ann. § 85-11-9(2). The notice of tax lien shall also serve as authority for the commissioner to issue warrants under Miss. Code Ann. §§ 27-7-57 (income taxes), 27-13-31 (corporate franchise taxes), and 27-65-59 (sales taxes) for the collection of the tax lien. Id.

Upon payment in full of a tax lien enrolled in the tax lien registry, including payment of any additionally accruing interest, penalty, fees and/or costs, the Department of Revenue must, within 15 working days from receipt thereof, file in the tax lien registry a notice of release of the tax lien being paid. Miss. Code Ann. § 85-11-17.

Subject to renewal, a notice of state tax lien is valid for seven (7) years from the date of enrollment. Miss. Code Ann. § 85-11-13. Any notice of tax lien that is reenrolled before the expiration of the seven (7) years is fully enforceable as of the date of re-enrollment. Id. Any notice of tax lien that is reenrolled after the lapse of the seven-year period loses the priority it had prior to its expiration. Id. There is no limit upon the number of times that the Department of Revenue may reenroll notices of tax liens. Id.

Source:

Citations in the Comment.

History:

Adopted effective as of August 1, 2019; [Comment updated effective as of August 1, 2021.](#)

CHAPTER 20: FORECLOSURES

20.06 Effect of Foreclosure Sale on Other Governmental Liens and Interests

Rights similar to those afforded the Internal Revenue Service are provided to the United States and federal governmental agencies. When property is foreclosed, and the record indicates, or the examiner has actual knowledge, that the property was owned, or a junior security interest held by the United States or a federal agency at the time of such foreclosure, inquiry as to rights and enforcement policy of the United States or the federal agency with regard to notice, consent to the foreclosure sale and right of redemption must be made. If it is determined that the agency owning the property or holding a junior security interest claimed any such rights, satisfactory evidence should be of record indicating that any required notice was given and, if applicable, consent to the foreclosure sale was obtained and, if applicable, the right of redemption must have been waived or the redemption period must have expired.

Comment:

28 U.S.C. § 2410(c) provides a one year right of redemption to the United States where real property is sold to satisfy a lien prior to the lien held by the United States other than a federal tax lien.

12 U.S.C. § 1825(b) provides that when acting as a receiver, no property of the Federal Deposit Insurance Corporation (FDIC) shall be subject to foreclosure without the consent of the FDIC. Pursuant to 12 U.S.C. § 1441a-~~2(a)(b)(1)~~ the Resolution Trust Corporation (RTC) has the same power and status of the FDIC.

It appears that various divisions of the United States and federal agencies do not consistently or uniformly interpret or enforce rights under 28 U.S.C. § 2410 and 12 U.S.C. § 1825. For example, FDIC and RTC have published policy statements on Foreclosure Consent and Redemption Rights. These policies differ in certain respects and enforcement varies depending on the capacity in which property or security interest are held by FDIC or RTC and the type of senior security interest being foreclosed. FDIC, RTC and other agency regulations and policies are published in the Federal Register and the Code of Federal Regulations.

Source:

Citations in the Comment.

History:

Adopted effective as of August 1, 2019; Comment updated effective as of August 1, 2021.

CHAPTER 21: SAMPLE FORMS

21.01 Sample Form of Title Opinion

Date

Via E-Mail

[Name of Addressee]

RE: TITLE OPINION

Parcel No.: _____

Indexing: Lot ____, Block ____, _____

County: _____ County, Mississippi

Dear _____:

This is to certify that I/we, _____, have conducted or caused to be conducted an examination of the official land records in the office of the Chancery Clerk of _____ County, Mississippi, with regard to title to the following described land, situated, lying and being in _____ County, Mississippi (the "Property"), to-wit:

SEE EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF.

My/our examination of the official land records was limited to the following indices ("Records Searched") for the periods shown:

[General][Sectional] Index	[32/50] years (from _____ to _____)
State Tax Lien Registry	7 years
Construction/Special Liens	1 year
Lis Pendens	Greater of 10 years or Period of Current Ownership
Federal Tax Liens	10 years
Federal Civil Judgments	20 years
Circuit Court Judgment Roll	7.5 years
Tax Sale Books	Greater of 10 years or Period of Current Ownership
Chancery Docket	Greater of 10 years or Period of Current Ownership
Ad Valorem Taxes	20__ through 20__
Solid Waste/Municipal Liens	7 years

Based upon my/our examination of the foregoing, I/we are of the opinion that as of _____, at 8:00 o'clock a.m., good and marketable title to the Property is vested in _____, in [fee simple, as joint tenants with full rights of survivorship and not as tenants in common] by virtue of that certain [Warranty Deed] from _____, dated _____, and filed of record on _____ at _____ .m., and recorded in [Book _____, Page _____], subject to the following record exceptions, to-wit:

1. Those taxes, special assessments and other governmental liens which become due and payable subsequent to the date hereof.

2. All restrictions, dedications, conditions, reservations, easements and other matters, if any, shown on the plat of _____, as recorded in Plat Book _____, Page(s) _____.

3. [Insert other matters of record, as necessary]

This opinion is expressly limited to the matters described above. I/we have not examined, and therefore express no opinion as to any matter not described above which might affect title to the Property, including:

A. Rights, interests or claims of parties in possession of the subject property not shown by the Records Searched or which may be revealed by competent inspection of the Property.

B. Rights, interests or claims affecting the Property which a complete and accurate survey would disclose, including, but not limited to, abutter's rights, boundary line disputes, overlaps or encroachments, roadways, deficiency in quantity of land, changes in boundary lines caused by the location of any water body within or adjacent to the Property or lack of access.

C. Matters of title not appearing of record or which are not properly indexed in the Records Searched of the county in which the Property is located, including, but not limited to unrecorded servitudes or easements, roadways, other uses of the Property not visible from the surface, other similar conditions not disclosed by Records Searched.

D. Forged or fraudulent contracts, deeds or other instruments affecting title or whether or not documents in the chain of title were executed to or from a party of sound and disposing mind or a nonexistent corporation, person or entity, or whether or not a person signing for or on behalf of a corporation, unincorporated association, or another person in a representative capacity was duly authorized to execute any documents in the chain of title in such capacity.

E. Any transfers, the substance and subject of which may be attacked as a fraudulent conveyance within the meaning of the Federal Bankruptcy Code or Mississippi law.

F. Any and all flood plain regulations, encroachment limits, flood plain zoning or wetland regulations as established by local, state or federal law or agencies.

G. Any changes in the boundaries caused by a change in the location of any water body within or adjacent to the Property, and any adverse claim to all or part of the Property that is or was previously under water.

H. Any security interests in fixtures attached to the Property of which notice may be given by a financing statement that has not been filed of record.

I. All liens for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after the date hereof, not shown by the Records Searched.

J. All taxes or special assessments not shown as a lien in the Records Searched or in the records of the local tax collecting authority as of the date of examination.

K. Any claim to (i) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, limestone, clay, rock, sand, and gravel located in, on, or under the Property or produced from the Property, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (ii) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto.

L. All facts or conditions which would be revealed by competent inspection of the Property, including, but not limited to, the existence or non-existence of any hazardous substances on or under the Property that may constitute a violation of any and all laws, statutes, ordinances, rules, regulations, orders, or determinations of any governmental authority pertaining to health or the environment, including, without limitation, the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Occupational Safety and Health Act,

the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Toxic Substances Control Act, all as amended and including all regulations, permits, and orders issued thereunder.

M. All zoning ordinances of any governmental authority applicable to the Property.

N. Compliance with the Federal Truth-In-Lending Act and Regulation Z which allow a rescission under certain circumstances.

You are advised to inform yourself of these matters by an independent investigation.

You should also obtain a professional environmental assessment to determine whether any solid waste, hazardous substances, pollutants, above or below ground storage tanks, drainage wells, water wells, landfill sites or other environmentally regulated conditions exist on the Property. Such conditions are not ordinarily shown in the official land records, but they may result in injunctions, fines, required clean-up, or other remedial action under federal, state, or local laws. These laws may impose liens against the Property and personal liability against the owner, even though the owner did nothing to create the condition and acquired the Property without knowing about it.

You may purchase additional protection of your interest in the Property through an owner's or lender's title insurance policy issued by [_____ Title Insurance Company] and purchased through my/our firm. A title insurance policy provides certain protection of your interest in the Property which exceeds the protection available through this opinion. If you are interested in obtaining a title policy or have questions concerning title policies, please contact us/me.

This Title Opinion is directed only to the addressee above and has been prepared for said addressee's use and reliance only. No **other** persons, firms, corporations or entities **other than the addressee** are authorized to rely on this opinion. **[OPTIONAL: No other person, including the addressee, shall be entitled to rely on this opinion for the purpose of writing any title insurance policy, either owner's or lender's, from any title insurance company authorized to sell title insurance in the state of Mississippi].**

WITNESS OUR SIGNATURE on this the ___ day of _____ 20___, but effective; however, as of the date stated above.

Sincerely,

[NAME OF LAW FIRM]

[Attorney Name]

Comment:

The foregoing sample form of title opinion is intended to be used as an example for Mississippi lawyers in drafting or reviewing a title opinion. This sample form is not the exclusive form for title opinions and use of a different form (or a modified version of this form) may be appropriate in certain situations.

Source:

Title Standards Board.

History:

Adopted effective as of August 1, 2019; [Sample form updated effective as of August 1, 2021.](#)

21.03 Sample Form of Affidavit of Scrivener's Error

[Format for Recording]

AFFIDAVIT OF SCRIVENER'S ERROR

(Miss. Code Ann. § 89-5-8(2))

Before me, the undersigned authority, on this day personally appeared _____ (insert name of affiant) ("Affiant") who, being first duly sworn, upon his/her oath states:

1. I am a licensed attorney admitted to practice in the State of Mississippi with personal knowledge of the facts and matters stated herein. [If Affiant is not the preparer, then add: My office address is _____].

2. I prepared an instrument in the chain of title to the real property more particularly described in Exhibit A attached hereto.

3. The instrument(s) identified by the following information (each, a "Subject Instrument") contains one or more scrivener's errors:

<u>Grantor</u>	<u>Grantee</u>	<u>Book/Page or Instrument No.</u>	<u>Date Recorded</u>
[●]	[●]	[●]	[●]
[●]	[●]	[●]	[●]

4. The purpose of this Affidavit is to provide notice of the scrivener's error described in this Affidavit and to correct the typographical or other minor errors contained in the Subject Instrument(s).

5. A brief description of each scrivener's error in the Subject Instrument(s) that this Affidavit is designed to correct is as follows:

[set forth the error(s) that was made and any other pertinent information regarding the error(s)]

6. The correct information to be inserted or reflected in or the information to be removed from the Subject Instrument(s) is as follows:

[set forth the correction desired to be made by the recordation of this affidavit]

7. Pursuant to Miss. Code Ann. § 89-5-8(2)(a), the Chancery Clerk is hereby requested to **(a) index this affidavit in both the general index under the names of the original parties to each Subject Instrument and in the sectional index, and (b) make a marginal notation on each such Subject Instrument.**

8. I am aware of the penalties of perjury under Federal Law, which includes the execution of a false affidavit, pursuant to 18 U.S.C.S. § 1621 wherein it is provided that anyone found guilty shall not be fined more than \$2,000 or imprisoned not more than 5 years or both. I am also aware that filing of a false affidavit is perjury and punishable under Miss. Code Ann. § 97-9-19. Finally, I am also aware that under Miss. Code Ann. § 97-19-39, if a person with the intent to cheat or defraud another uses a false token or any other false pretense to obtain a signature of a person on a writing, or obtain money, personal property, or value, the person is guilty of a crime and will be punished by a fine of not more than three times the amount of the thing obtained and imprisonment in the penitentiary for not more than three years or in a jail for not more than one year.

The undersigned certifies under penalty of perjury that the foregoing is true and correct.

[●], Affiant

STATE OF MISSISSIPPI
COUNTY OF [●]

Subscribed, sworn to (or affirmed) and acknowledged before me this _____ day of _____, 20____, by _____, who [] is personally known to me, or [] has produced _____, as identification.

(Notary Stamp)

Notary Public
My Commission Expires: _____

[Add Exhibit A – Legal Description]

Comment:

The foregoing sample form of Affidavit of Scrivener’s Error must be executed by an attorney that has prepared any instrument in the chain of title and may only be used to correct typographical or other minor errors for the purpose of giving effect to a previous instrument’s clarified intent where there is no apparent reason to question the affidavit’s factual accuracy.

For a detailed discussion regarding reliance on affidavits of scrivener’s error, see Standard 14.04 (Affidavits of Scrivener’s Error).

Source:

Title Standards Board.

History:

Adopted effective as of August 1, 2019; [Sample form updated effective as of August 1, 2021.](#)

21.04 Sample form of Affidavit of Non-homestead

[Format for Recording]

AFFIDAVIT OF NON-HOMESTEAD
(Must be signed by the non-titled spouse)

Before me, the undersigned authority, on this day personally appeared _____ (insert name of affiant) (“Affiant”) who, being first duly sworn, upon his/her oath states:

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1. Affiant is the non-titled spouse of the owner of that certain real property having a street address of [●], phone number of [●], and being more particularly described as set forth on Exhibit A attached hereto (the "Property").

2. Affiant has (select only one):

[Voluntary Abandonment] together with the titled spouse, (a) freely and voluntarily abandoned the Property and secured and currently occupies with Affiant's family a new homestead residence having a street address of [●], (b) removed all of Affiant's family's personal belongings from the Property and relocated the same to the new homestead residence, (c) having no intent to return to the Property for the purpose of residing therein, temporarily or permanently, or otherwise, and (d) specifically renounces, disclaims, quit-claims and abandons for all purposes any and all homestead rights, if any, which the Affiant has in and to the Property.

[Separated and living apart] (a) freely and voluntarily separated from Affiant's spouse with no intent to return to Affiant's spouse or to reside, either temporarily or permanently, with Affiant's spouse on the Property, (b) currently maintains and occupies Affiant's own separate homestead residence at [●], (c) removed all of Affiant's personal belongings from the Property and relocated the same to Affiant's new homestead residence, and (d) specifically renounces, disclaims, quit-claims and abandons for all purposes any and all homestead rights, if any, which the Affiant has in and to the Property.

3. This affidavit is made in order to induce the acceptance of a conveyance, mortgage, deed of trust or other encumbrance on the Property executed solely by the titled spouse.

4. I am aware of the penalties of perjury under Federal Law, which includes the execution of a false affidavit, pursuant to 18 U.S.C.S. § 1621 wherein it is provided that anyone found guilty shall not be fined more than \$2,000 or imprisoned not more than 5 years or both. I am also aware that filing of a false affidavit is perjury and punishable under Miss. Code Ann. § 97-9-19. Finally, I am also aware that under Miss. Code Ann. § 97-19-39, if a person with the intent to cheat or defraud another uses a false token or any other false pretense to obtain a signature of a person on a writing, or obtain money, personal property, or value, the person is guilty of a crime and will be punished by a fine of not more than three times the amount of the thing obtained and imprisonment in the penitentiary for not more than three years or in a jail for not more than one year.

The undersigned certifies under penalty of perjury that the foregoing is true and correct.

[●], Affiant

STATE OF MISSISSIPPI
COUNTY OF [●]

Subscribed, sworn to (or affirmed) and acknowledged before me this _____ day of _____, 20____, by _____, who [] is personally known to me, or [] has produced _____, as identification.

(Notary Stamp)

Notary Public
My Commission Expires: _____

CORROBORATING AFFIDAVIT
(~~Must be signed by the titled spouse~~)

STATE OF MISSISSIPPI _____
COUNTY OF [●] _____

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~~[•], being of lawful age and first duly sworn, under oath states that I am the owner (titled spouse) of the Property and that the information given in the above and foregoing affidavit, made by [•], is true, and accurate, to the personal knowledge of this affiant.~~

[•], Affiant

STATE OF MISSISSIPPI _____
COUNTY OF [•] _____

~~Subscribed, sworn to (or affirmed) and acknowledged before me this _____ day of _____, 20____, by _____, who [] is personally known to me, or [] has produced _____, as identification.~~

(Notary Stamp) _____ Notary Public
_____ My Commission Expires: _____

Comment:

The foregoing sample form of Affidavit of Non-homestead should be executed by ~~both~~ the ~~titled spouse and the~~ non-titled spouse.

For a detailed discussion regarding reliance on affidavits of non-homestead, see Standard 15.02 (Homestead).

Source:

Title Standards Board.

History:

Adopted effective as of August 1, 2019; Sample form and Comment updated effective as of August 1, 2021.