

**EDITOR'S NOTE:** The authors present this commentary in a format similar to that applied in *American Law Reports* and, more specifically, to state title standards.<sup>+</sup> Accordingly, the citations in the commentary appear in the body of the text.<sup>\*\*</sup>

## COMMENTARY

# PROPOSED WYOMING TITLE STANDARDS (PART I OF III)

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<sup>+</sup> See generally, e.g., *Which of Conflicting Descriptions in Deeds or Mortgages of Fractional Quantity of Interest Intended to be Conveyed Prevails*, 12 A.L.R. 4th 795, § 3 (1982) (using the format in which a proposition is stated and then supported with textual discussion of case and statutory law); TEXAS TITLE EXAMINATION STANDARDS (1997, rev. 2009), available at <http://jay.law.ou.edu/faculty/Hampton/Mineral%20Title%20Examination/Spring%202012/Texas%20Title%20Exam%20Standards.pdf>.

<sup>\*\*</sup> Cf. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 1.1(a), (c), at 53–54 (Columbia Law Review Ass'n et al. eds., 19th ed. 2010) (requiring footnote citations for traditional law review articles).

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## I. INTRODUCTION

Thirty-three years have passed since the Wyoming Title Standards were revised. Title standards are adopted for the express purpose of providing professional standards for title examiners to determine whether a particular tract of land possesses defects to its marketable title.<sup>1</sup> Professional standards “provide a basis for the resolution of conflicting title interpretations, the determination of professional malpractice, and judicial interpretation of state law.”<sup>2</sup> Some states review title standards on a yearly basis.<sup>3</sup> Some state bars maintain standing editorial boards, usually made up of members of their real estate, probate, trust law, oil, gas, and energy sections, which review existing standards or consider additional standards.<sup>4</sup> Currently in Wyoming, no standing committee for yearly review exists, and Wyoming does not add to its existing title standards.

In 1946, Wyoming adopted its eight original Standards for Title Examination.<sup>5</sup> The 1949 State Bar Legislative Meeting adopted and added Standards 9 through

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<sup>1</sup> See Gary B. Conine & Daniel J. Morgan, *The Wyoming Marketable Title Act—A Revision of Real Property Law*, 16 LAND & WATER. L. REV. 181, 182 n.3 (1981) (“Title standards have been adopted in various states for the purposes of providing professional standards for title examiners to determine the presence of title defects.”).

<sup>2</sup> *Id.*

<sup>3</sup> See, e.g., Introductory Letter from John B. Wimbish, in 2012 TITLE EXAMINATION STANDARDS HANDBOOK (John B. Wimbish ed.), available at <http://mbwm.com/wp-content/uploads/2012/12/2012-TES-Handbook.pdf> (“The Board of Directors of the Real Property Law Section of the Oklahoma Bar Association is pleased to present the 2012 edition of its *annual* publication of the Oklahoma Title Examination Standards.” (emphasis added)).

<sup>4</sup> See, e.g., *id.* (discussing the work of Oklahoma’s title committee in compiling the 2012 edition).

<sup>5</sup> See *Standards for Title Examination*, 3 WYO. L.J. 179, 179–80 (1948) (containing Standards Numbers 1–8).

23 to the original eight.<sup>6</sup> The standards were fully revised in 1974 and renamed the Wyoming Title Standards.<sup>7</sup>

The Wyoming Legislature enacted the Wyoming Marketable Title Act (WMTA) in 1975.<sup>8</sup> In the fall of 1979, the President of the Wyoming State Bar responded to the enactment of the WMTA by directing the Wyoming State Title Standards Committee to draft new standards incorporating the effects of the WMTA.<sup>9</sup> The Wyoming State Title Standards Committee published the 1980 revised Chapter 4 to incorporate the WMTA.<sup>10</sup> The Wyoming State Title Standards Committee noted, “there is extensive interdependence among the provisions of the [WMTA]. Because of the structure of the [WMTA], the standards contained in [Chapter 4] are also interdependent and should be read in conjunction with all others.”<sup>11</sup>

Much has changed since 1980. In developing its 1987 definition of “marketable title,” the Wyoming Supreme Court adopted definitions from Montana, Oregon, and Iowa.<sup>12</sup> In the 1990s, several states enacted or adopted title standards which, for the first time, included the effects of bankruptcy cases upon real estate transactions.<sup>13</sup> And since 2006, the effective implementation of modern oilfield technologies, such as shale formation hydraulic fracturing, has created an oil and

<sup>6</sup> *Id.* at 179, 180–83 (containing Standards Numbers 9–23 and referencing the subsequent adoption of the additional standards in 1949).

<sup>7</sup> See COMMITTEE ON TITLE STANDARDS OF THE WYOMING STATE BAR, TITLE STANDARDS OF THE WYOMING STATE BAR, at ch. 4 (1974, rev. 1980) [hereinafter WYOMING TITLE STANDARDS] (containing the entirety of the 1974/1980 Wyoming Title Standards); see also *Appendix III: Wyoming Title Standards*, 16 LAND & WATER L. REV. 399, 399–409 (1981) (publishing only the 1980 addition of Chapter 4 to the Wyoming Title Standards).

<sup>8</sup> Wyoming Marketable Title Act, 1975 Wyo. Sess. Laws 163 (codified as amended at WYO. STAT. ANN. §§ 34-10-101 through -109).

<sup>9</sup> Conine & Morgan, *supra* note 1.

<sup>10</sup> See WYOMING TITLE STANDARDS, *supra* note 7 (containing the revised Chapter 4, Standards 4.1–4.14).

<sup>11</sup> See *id.* (addressing the purpose behind Chapter 4 and its relation to the other standards).

<sup>12</sup> *Bethurem v. Hammett*, 736 P.2d 1128, 1131–32 (Wyo. 1987); see *Wilson v. Fenton*, 312 N.W.2d 524, 526–27 (Iowa 1981) (“A title is merchantable if a person of reasonable prudence would accept the title in the ordinary course of business.”); *McCarthy v. Timberland Res., Inc.*, 712 P.2d 1292, 1294 (Mont. 1985) (“The term ‘marketable title’ is difficult of definition. . . . The most practical test is as to whether the title is such that a third person may reasonably raise a question after the time the contract would have been completed. If the conditions of the title warrants such attack, the purchaser may reject the title as ‘unmarketable.’” (quoting *Silfvast v. Asplund*, 20 P.2d 631, 637 (Mont. 1933)); *Cameron v. Benson*, 643 P.2d 1360, 1363 (Or. Ct. App. 1982) (“A purchaser is not required to accept title which might reasonably be expected to involve litigation. ‘[I]f there is doubt and uncertainty about the title sufficient to form the basis for litigation, . . . it cannot be thrown upon the purchaser to contest that doubt . . . .’” (quoting *Wollenberg v. Rose*, 78 P. 751, 752 (Or. 1904)), *rev’d on other grounds*, 664 P.2d 412 (Or. 1983).

<sup>13</sup> See, e.g., TEXAS TITLE EXAMINATION STANDARDS ch. 12 Bankruptcies (1999).

gas drilling boom in Wyoming.<sup>14</sup> With the drilling boom arose a concomitant need for title opinions of all types.<sup>15</sup> The increase in drilling and title opinions necessitated the revision of the 1974/1980 Wyoming Title Standards.

This commentary briefly discusses the previous Wyoming Title Standards and proposes new standards (Proposed Standards). The commentary also suggests a reorganization of the still applicable current standards, which lists the standards in a more orderly and usable fashion. This commentary is the first of a three part series to appear in the *Wyoming Law Review*. Two appendices accompany this commentary: Appendix I contains the 1946 and 1949 Standards for Title Examination; and Appendix II contains the revised 1974 and 1980 Wyoming Title Standards.

## II. BRIEF DISCUSSION OF PREVIOUS TITLE STANDARDS

As discussed above, Wyoming adopted its original Standards for Title Examination in 1946.<sup>16</sup> These early eight standards were not actually postulated “standards,” but rather were presented in a question and answer format.<sup>17</sup> For example, Standard Number 1 (untitled) states:

Problem: When an attorney discovers a title situation which he believes should be corrected, what step should he take first if he has knowledge that the same title has been examined by another attorney who has not objected to the defect?

Answer: He should communicate with the previous examiner, explain to him his objection and afford opportunity for discussion.<sup>18</sup>

Some states still use this format today.<sup>19</sup> Wyoming’s 1946 standards did not contain an official table of contents, but for convenience of reference, the authors have compiled a table of contents in Appendix I to this commentary.<sup>20</sup>

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<sup>14</sup> See generally Colo. Dep’t of Natural Res., *Colorado’s New Oil Boom—the Niobrara*, Rock Talk, Spring 2011, at 8, available at <http://geosurvey.state.co.us/pubs/Documents/rtv13n1%204-15-11%20B.pdf> (“Horizontal drilling and artificially fracturing the rock have encouraged Niobrara drilling activity in recent years.”).

<sup>15</sup> See generally David Phelps, *Oil Boom Boosts Law Firms, Too*, STAR TRIBUNE, Aug. 17, 2001, <http://m.startribune.com/news/?id=127613278> (detailing the increasing demand for legal services, including title opinions, resulting from the oil boom in North Dakota).

<sup>16</sup> See *Standards for Title Examination*, *supra* note 5, at 179–80 (containing Standards Numbers 1–8).

<sup>17</sup> See generally *id.*

<sup>18</sup> *Id.* at 179.

<sup>19</sup> See, e.g., COLORADO REAL ESTATE TITLE STANDARDS (2003), available at <http://www.cobar.org/Docs/TitleStandards03.pdf>.

<sup>20</sup> See *infra* APPENDIX I.

The 1949 additions to the Standards for Title Examination adopted then-new Standards Numbers 9 through 23.<sup>21</sup> Again, no table of contents was officially given. The authors have compiled the 1949 additional standards using the titles as published in the *Wyoming Law Journal* and added a table of contents to Appendix I.<sup>22</sup>

The revised 1974/1980 Wyoming Title Standards added dozens of new standards.<sup>23</sup> Many were based upon the 1960 Model Title Standards, a project sponsored by the University of Michigan Law School and the Section of Real Property, Probate, and Trust Law of the American Bar Association.<sup>24</sup> The general scheme of the Model Title Standards was to: (1) divide the standards into chapters; (2) entitle and state each standard in capital letters; and (3) support the standard with “authorities, lists of similar state standards, and comment[s].”<sup>25</sup> Again, no table of contents was included in the 1974/1980 Wyoming Title Standards. Additionally, Chapter III and the titles to Chapters IV and V were omitted for undisclosed reasons. However, the authors compiled a table of contents for the 1974/1980 Wyoming Title Standards found in Appendix II.<sup>26</sup> A comparison of the tables of contents reflects the numerous changes and updates from the 1946 and 1949 to 1974/1980 standards.<sup>27</sup>

### III. COMPLETE TABLE OF CONTENTS FOR PROPOSED STANDARDS

Although this commentary only covers a portion of the Proposed Standards, the authors suggest the following table of contents for the entire Proposed Standards:

#### **CHAPTER I TITLE STANDARDS**

- 1.1. Definition of Title Standards.
- 1.2. Purpose of Title Standards.

#### **CHAPTER II TITLE EXAMINER AND TITLE EXAMINATION**

- 2.1. Purpose of Title Examination.
- 2.2. Review by Examiner.
- 2.3. Consultation with Prior Examiner.

<sup>21</sup> *Standards for Title Examination*, *supra* note 5, at 179.

<sup>22</sup> *See id.* at 180–83 (containing Standards Numbers 9–23); *infra* APPENDIX II.

<sup>23</sup> *Compare Standards for Title Examination*, *supra* note 5, at 179–83 (containing 1946 and 1949 standards), *with* WYOMING TITLE STANDARDS, *supra* note 7.

<sup>24</sup> LEWIS M. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS (1960).

<sup>25</sup> *Id.* at vii.

<sup>26</sup> *See infra* APPENDIX II.

<sup>27</sup> *Compare* APPENDIX II (containing the authors’ 1974/1980 Wyoming Title Standards table of contents reflecting the remarkable updates to Wyoming’s title standards), *with* APPENDIX I (containing the authors’ table of contents for the original twenty-three title standards and the title standards in full).

**CHAPTER III  
ENCUMBRANCES**

- 3.1. Definition of Encumbrances.
- 3.2. Effect of Encumbrances.

**CHAPTER IV  
LAND DESCRIPTIONS**

- 4.1. When Defective Land Descriptions Do Not Impair Marketability.

**CHAPTER V  
EXECUTION, ACKNOWLEDGMENT, AND RECORDATION**

- 5.1. Defects and Omissions—10 Year Curative Act.
- 5.2. Delivery Date; Execution Date.
- 5.3. Delivery; Delay in Recordation.
- 5.4. Federal Revenue Stamps.
- 5.5. Corrective Instruments.
- 5.6. Acknowledgments.

**CHAPTER VI  
MARKETABLE TITLE AND THE MARKETABLE TITLE ACT**

- 6.1. Definition of Marketable Title.
- 6.2. Remedial Effect.
- 6.3. Requisites of Marketable Record Title.
- 6.4. Definition of Record.
- 6.5. Unbroken Chain of Title of Record.
- 6.6. Matters Purporting to Divest.
- 6.7. Effect of Marketable Record Title on Prior Interest.
- 6.8. Defects in the Forty-Year Chain.
- 6.9. Forty-Year Possession in Lieu of Filing Notice.
- 6.10. Effect of Adverse Possession.
- 6.11. Effect of Recording Instrument of Conveyance During Forty-Year Period.
- 6.12. Interests Exempted.
- 6.13. Quitclaim Deed or Testamentary Residuary Clause in Forty-Year Chain.
- 6.14. Forty-Year Abstract.
- 6.15. Conflicting Marketable Record Titles.

**CHAPTER VII  
NAME VARIANCES**

- 7.1. Idem Sonans.
- 7.2. Middle Names or Initials.
- 7.3. Abbreviations.
- 7.4. Recitals of Identity.
- 7.5. Suffixes.

**CHAPTER VIII****POWERS OF ATTORNEY**

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**CHAPTER IX****CAPACITY TO CONVEY**

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- 9.3. Guardians.

**CHAPTER X****CORPORATE CONVEYANCES**

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- 13.4. Conveyances by Heirs of an Estate.
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- 13.6. Affidavits of Heirship.

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- 15.2. Involuntary Mechanics' and Materialmen's Liens.
- 15.3. Judgment Liens.
- 15.4. Implied Vendor's Liens.
- 15.5. Other Involuntary Statutory Liens.
- 15.6. Federal Tax Liens.
- 15.7. Payment of Ad Valorem Taxes.
- 15.8. Priority of Ad Valorem Tax Lien.
- 15.9. Lien Priority and Subordination.
- 15.10. Removal of Lien.
- 15.11. Lis Pendens.

**CHAPTER XVI****FORECLOSURES**

- 16.1. Nonjudicial Foreclosure.
- 16.2. Judicial Foreclosure and Execution Sales.
- 16.3. Foreclosure of Home Equity Loans and Reverse Mortgages.
- 16.4. Deeds in Lieu of Foreclosure.

**CHAPTER XVII****AFFIDAVITS AND RECITALS**

- 17.1. Affidavit Defined.
- 17.2. Reliance Upon Affidavits.
- 17.3. Affidavits of Non-Production.



#### IV. FORMAT AND STYLE FOR PROPOSED STANDARDS

As evidenced by the Proposed Standards in Section V below, the format and style will follow the examples from other states, which have adopted more recent standards than the 1960 Model Standards.<sup>28</sup> Many of these states have added more meaningful commentary and cautions to their newer standards.<sup>29</sup> These additions represent a marked change from the presentation style of the 1974/1980 Wyoming Title Standards. The Proposed Standards will adhere to the following format: first, the standard will be stated; second, an “official” comment will be made upon the standard; and third, any pertinent caution will be added. Additionally, as in other state standards, a source or sources for the standard will be indicated.

For example, regarding the Wyoming Proposed Standard 6.1, Definition of Marketable Title, the following format is representative:

##### **Standard 6.1. Definition of Marketable Title.**

All title examinations should be based on marketability of title. To be marketable, a title need not be free from every possible defect, but must not expose a party holding it to litigation.

##### **Comment:**

In Wyoming, the question of whether title is marketable is a question of law for the courts. *Bethurem v. Hammett*, 736 P.2d 1128, 1132 (Wyo. 1987). In developing its definition of “marketable title,” the Wyoming Supreme Court has adopted definitions from other jurisdictions such as Montana, Oregon, and Iowa. *Id.* at 1131.

*See McCarthy v. Timberland Resources, Inc.*, 712 P.2d 1292, 1294 (Mont. 1985) (“The term ‘marketable title’ is difficult of definition . . . . The most practical test is as to whether the title is such that a third person may reasonably raise a question after the time the contract would have been completed. If the conditions of the title warrants such attack, the purchaser may reject the title as ‘unmarketable.’” (quoting *Silfvast v. Asplund*, 20 P.2d 631, 637 (Mont. 1933))).

*See also Cameron v. Benson*, 643 P.2d 1360, 1363 (Or. 1982) (“A purchaser is not required to accept title which might reasonably be expected to involve litigation. ‘[I]f there is doubt and uncertainty about the title sufficient to form the

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<sup>28</sup> *See infra* SECTION V (listing Proposed Standards Chapters 1–5).

<sup>29</sup> *See, e.g.*, NORTH DAKOTA MINERAL TITLE STANDARDS (1989); OHIO STANDARDS OF TITLE EXAMINATION (1995); OKLAHOMA TITLE STANDARDS (1987); TEXAS TITLE EXAMINATION STANDARDS (1997, rev. 2009).

basis for litigation, . . . it cannot be thrown upon the purchaser to contest that doubt.” (quoting *Wollenberg v. Rose*, 78 P. 751, 752 (Or. 1904)), *rev'd on other grounds*, 664 P.2d 412 (Or. 1983).

*See also* *Wilson v. Fenton*, 312 N.W.2d 524, 526–27 (Iowa 1981) (“A title is merchantable if a person of reasonable prudence would accept the title in the ordinary course of business.”).

In 1929, Chief Justice Blume of the Wyoming Supreme Court wrote: “The right to rescind exists for various reasons. Among them are enumerated want of title and insolvency of the vendor.” *Hawkins v. Stoffers*, 276 P. 452, 456 (Wyo. 1929). As such, “[w]here, contrary to a seller’s covenant of merchantability, title to realty is unmarketable, a buyer . . . is entitled to rescission.” *Bethurem*, 736 P.2d at 1134. *See also* *Racicky v. Simon*, 831 P.2d 241, 243 (Wyo. 1992); *Cady v. Slingerland*, 514 P.2d 1147, 1150 (Wyo. 1973). However, before a buyer may rescind a contract and receive restitution, the buyer must clearly and convincingly prove: “[O]ne, the seller misrepresented the interest in land which was being sold, in a material and substantial aspect; two, the buyer relied upon the false representation; and three, as a result the buyer suffered injury.” *Bethurem*, 736 P.2d at 1134 (quoting *Hagar v. Mobley*, 638 P.2d 127, 132 (Wyo. 1981)).

*But see also* *ABC Builders, Inc. v. Phillips*, 632 P.2d 925, 932 (Wyo. 1981) (“[Wyoming] law implies an obligation on the part of a vendor to convey a marketable title, yet with respect to the physical condition of the premises the traditional view had been that the rule of caveat emptor (let the buyer beware) applies except, because of modern developments in the law with respect to new housing built for sale and failure to disclose defects.”).

### **Caution:**

Matters that may make a title unmarketable include:

In *Bethurem*, the Wyoming Supreme Court held:

[T]he fence encroached approximately 17 feet into the city street, the garage encroached approximately eight feet, and the actual residence encroached approximately four feet. Clearly, such substantial encroachments subjected Buyer to potential litigation involving the purchased property. Furthermore, a reasonably prudent person familiar with the nature and extent of these encroachments would decline to purchase at an otherwise reasonable market price. Accordingly, title was unmarketable.

*Bethurem*, 736 P.2d at 1132. The court further stated: “Where improvements to realty encroach onto adjoining property, exposing the buyer to a reasonable possibility of litigation, title to the property is unmarketable as a matter of law.” *Id.* at 1134.

“Restrictive covenants limit permissible uses of land and are considered a cloud on title.” *Granite Springs Retreat Ass’n, Inc. v. Manning*, 133 P.3d 1005, 1012 (Wyo. 2006). The court further stated: “Since covenants impose restrictions upon use and enjoyment of the burdened land, they are burdens or clouds upon title. In theory they make title less marketable, against the law’s long bias in favor of unencumbered, marketable title.” *Id.* (quoting ROGER A. CUNNINGHAM ET AL., *THE LAW OF PROPERTY* § 8.13, at 467 (2d. ed. 1993)).

## V. PROPOSED STANDARDS: CHAPTERS 1–5

The standards proposed below include Chapters 1 through 5 only. As mentioned above, this present commentary is Part I of III.

### CHAPTER I

#### TITLE STANDARDS

##### **Standard 1.1. Definition of Title Standards.**

Standards for title examinations are statements that declare an answer to a common question or solution for a problem often encountered in the process of title examination.

##### **Standard 1.2. Purpose of Title Standards.**

The purpose of title standards is to alleviate disagreements among members of the Wyoming Bar regarding transactions and to set forth standards with which title attorneys can generally agree concerning title documents in order to promote uniformity in the preparation, use, and meaning of such documents. A primary function of title standards is to eliminate technical objections that do not impair marketability as well as common objections that are based upon a misapplication of law.

### CHAPTER II

#### TITLE EXAMINER AND TITLE EXAMINATION

##### **Standard 2.1. Purpose of Title Examination.**

The purpose of a title examination is to advise an examiner’s client of the status of title and of the methods by which the client may secure marketable title

to oil and gas property. Based upon the materials examined, the oil and gas title opinion should advise as to all irregularities, defects, and encumbrances that may reasonably be expected to materially affect the value or use of the property or that may expose the owner to litigation or adverse claims even if the litigation or adverse claims can reasonably be expected to be successfully defended. The oil and gas title opinion should include comments, objections, and requirements to any such irregularities, defects, and encumbrances.

**Comment:**

An examiner should determine and report all relevant irregularities, defects, and encumbrances discovered by the examination.

**References:**

WYOMING TITLE STANDARDS 2.1 (1974, rev. 1980).

LEWIS M. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 2.1 (1960).

**Standard 2.2. Review By Examiner.**

Based upon the scope of the title examination, an examiner should review any mineral, royalty or other deeds, mortgages, liens, affidavits, documents, maps, or other reliable materials that are necessary to form a legal opinion as to the status of title to the property. Documents or records referred to within the foregoing instruments should also be reviewed. Any materials examined should be set forth in the title opinion or as an exhibit to the opinion, regardless of whether such materials examined have been properly filed of record.

**Comment:**

In most states, an examiner's opinion is based upon the entire chain of title starting from the date that the title passed from the sovereign to the present. Additionally, an examiner may base an opinion upon a chain of title covering a shorter time period. An examiner may limit the examination to instruments in the chain of title that were recorded after the period covered by a prior title opinion that was submitted by the client and prepared by another attorney; however, in this instance, the examiner should transmit in writing to the client that the client assumes the risk of any deficiencies in the prior opinion.

Documents submitted for examination may vary, but they must be sufficient for an examiner to be legally satisfied as to the status of title to the property. The examiner should disclose the documents examined in order to advise the client of the basis for the opinion and to protect an examiner from documents and matters not considered. In modern times, the examining attorney usually

relies upon third-party land professionals to identify and deliver the documents to be examined. However, the examining attorney should make a judgment upon the reliability of the methods used in doing so and should disclose any unreliable methods.

The scope of an examiner's opinion may be limited at the request of the client. The scope may also be tailored to suit the client's particular purpose or property interest. After determining such limitation is adequate for the client's purpose and when an opinion is so limited, an examiner should set forth the exact scope of the examination or opinion.

**Caution:**

The Wyoming Marketable Title Act significantly impacts all title examinations. See Proposed Standards, Chapter VI for further discussion.<sup>30</sup>

**References:**

OKLAHOMA TITLE EXAMINATION STANDARDS 1.2 (2012).

TEXAS TITLE STANDARDS 1.20 (1997, rev. 2009).

**Standard 2.3. Consultation With Prior Examiner.**

An attorney examiner may communicate with another examiner who has examined the title if such communication is in the best interests of an examiner's client and does not violate the Wyoming Rules of Professional Conduct.

**Comment:**

Communication with the prior attorney examiner is a matter of discretion.

**Caution:**

A prior examiner may represent an adverse or potentially adverse party, making such communication inappropriate or a violation of the Wyoming Rules of Professional Conduct.

**References:**

WYOMING TITLE STANDARDS 2.2 (1974, rev. 1980).

LEWIS M. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 2.2 (1960).

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<sup>30</sup> Chapter VI of the Proposed Standards is forthcoming in Part II of this commentary.

## CHAPTER III

### ENCUMBRANCES

#### **Standard 3.1. Definition of Encumbrances.**

An encumbrance is a right or interest in land subsisting in third parties consistent with the passing of fee. An encumbrance is not consistent with good and marketable title.

#### **Comment:**

An encumbrance is a right or interest in land which may subsist in third persons consistent with the passing of fee. WYO. STAT. ANN. § 34.1-9-102(a) (xxxii) (2012). By Wyoming statute, an encumbrance is defined as a “mortgage or other lien of record, securing or evidencing indebtedness and affecting land to be subdivided including liens for labor and materials. Taxes and assessments levied by public authority are not an encumbrance . . . except such taxes and assessments as may be delinquent.” WYO. STAT. ANN. § 18-5-302(a)(vii) (2012).

Encumbrances are commonly categorized in one of three areas: “(1) servitudes, (2) encumbrances, as that term is used in its more technical sense—i.e., liens or charges on the land, and (3) present or future estates which may be carved out of the estate conveyed.” *Foxley & Co. v. Ellis*, 201 P.3d 425, 432–33 (Wyo. 2009) (quoting 14 RICHARD R. POWELL, *THE LAW OF REAL PROPERTY* § 81A.06[2] [c][i]–[ii], at 117–18 (Michael Allan Wolf ed., 1997)). In general, a servitude affects the physical enjoyment of land or the land itself, thus “reducing the value of the land because a purchaser will not pay as much for a parcel of land which is limited in its usage.” *Id.* Case law has categorized easements and profits to constitute servitudes. *Seven Lakes Dev. Co., L.L.C. v. Maxson*, 144 P.3d 1239, 1245–46 (Wyo. 2006); *Denver Joint Stock Land Bank of Denver v. Dixon*, 122 P.2d 842, 847 (Wyo. 1942). “An encumbrance is any right or interest existing in a third person which diminishes the value of the estate to the grantee but which is consistent with the passage of the estate to the grantee.” *Foxley*, 201 P.3d at 433 (quoting 14 RICHARD R. POWELL, *THE LAW OF REAL PROPERTY* § 81A.06[2] [c][i]–[ii], at 117–18 (Michael Allan Wolf ed., 1997) (internal quotation marks omitted)). Liens may arise out of many different contexts. Liens of mortgages, tax liens, homeowner’s association liens, judgment liens, environmental liens, UCC fixture filings, and municipal assessment liens are all encumbrances. *See Foxley*, 201 P.3d at 431 (“[A] profit is an encumbrance.”); *Patel v. Khan*, 970 P.2d 836, 839 (Wyo. 1998) (recognizing a mortgage lien constitutes an encumbrance).

#### **References:**

WYOMING TITLE STANDARDS 16.1, 16.4, 16.8, 16.9 (1974, rev. 1980).

LEWIS M. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 16.1, 16.9 (1960).

### **Standard 3.2. Effect of Encumbrances.**

Encumbrances in the chain of title will prevent the conveyance of marketable title if such encumbrances impede the use and enjoyment of the land. Wyoming, like many states, has codified the concept of a covenant against encumbrances, which mandates that at the time of conveyance grantor warrants:

(a) that at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple in and to the premises therein described, and had good right and power to convey the same; (b) that the same were then free from all incumbrances [sic]; and (c) that he warrants to the grantee, his heirs and assigns, the quiet and peaceful possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same.

WYO. STAT. ANN. § 34-2-103 (2012). Liens or charges on the grantee's land violate the covenant against encumbrances. *Patel v. Khan*, 970 P.2d 836, 839 (Wyo. 1998). A grantee or purchaser is entitled to indemnification for any encumbrance on the property which must be satisfied or removed. *Id.* at 836.

#### **Comment:**

A warranty deed includes the covenant that the property conveyed is “free from all incumbrances [sic].” § 34-2-103. “Consequently, any encumbrance on the seller's title needs to be specifically listed and excluded from the warranty. Otherwise, the seller will be in breach of the warranty.” *Foxley & Co. v. Ellis*, 201 P.3d 425, 432 (Wyo. 2009). “A covenant of title which warrants that the premises are free from encumbrances is an agreement to indemnify the covenantee in the event that he or she suffers any loss to the value of the premises due to the existence of an encumbrance.” *Id.* (quoting 14 RICHARD R. POWELL, *THE LAW OF REAL PROPERTY* 117–18 (Michael Allan Wolf ed., 1997)).

#### **References:**

WYOMING TITLE STANDARDS 16.1–16.9, 17.1, 22.2 (1974, rev. 1980).

LEWIS M. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 15.3, 16.1–16.9, 17.1, 22.1 (1960).

## CHAPTER IV

### LAND DESCRIPTIONS

#### **Standard 4.1. When Defective Land Descriptions Do Not Impair Marketability.**

An examiner may assume that errors, irregularities, deficiencies, and inconsistencies in real property descriptions in the chain of title do not impair marketability unless, after considering all circumstances contained in the record:

(a) there is significant uncertainty as to the real property described in the instrument; or

(b) the description does not rise to the level of the minimal requirements of sufficiency and definiteness required in an effective conveyance of real property.

When examining questionable descriptions of real property and determining the adequacy of the description, the examiner should consider all relevant factors, including, but not limited to, the lapse of time from the instrument containing the deficient description, subsequent conveyances, the patent or typographical nature of the deficiencies, and accepted rules of construction.

#### **Comment:**

An adequate legal description provides the means of identifying the real property being conveyed. *Comet Energy Servs., LLC v. Powder River Oil & Gas Ventures, LLC*, 239 P.3d 382, 391 (Wyo. 2010); *Pullar v. Huelle*, 73 P.3d 1038, 1040–41 (Wyo. 2003); *King v. White*, 499 P.2d 585, 588–89 (Wyo. 1972). “[T]he writing must contain an adequate legal description or must furnish the means by which the land can be identified.” *Pullar*, 73 P.3d at 1040 (citing *Noland v. Haywood*, 23 P.2d 845, 845 (Wyo. 1933)). This rule also applies to the conveyance of water rights. *King*, 499 P.2d at 588.

“[T]he description ‘must be sufficient to fix and comprehend the property which is the subject of the transaction, so that, . . . the description, without being contradicted or added to, can be connected with and applied to the very property intended and to the exclusion of all other property.’” *Noland*, 23 P.2d at 846 (quoting *Ryan v. United States*, 136 U.S. 68, 82 (1890)). “Where a deed contains references both of a general and [specific] nature, the [specific] description is preferred and will control over or limit a more general description.” *Glover v. Giraldo*, 824 P.2d 552, 555 (Wyo. 1992).

A recitation of acreage or other measure of area is treated as merely the parties’ estimation of the amount of acreage conveyed by the deed, and this is particularly so where the recitation of acreage includes the phrase “more or less.” *Henry v.*



Borushko, 281 P.3d 729, 732–33 (Wyo. 2012); *Rouse v. Munroe*, 658 P.2d 74, 78 (Wyo. 1983). Therefore, recitation of acreage is of little use in interpreting a deed. *Borushko*, 281 P.3d at 733. The Wyoming Supreme Court has held that an error in total acreage did not make the legal description too vague to comply with the statute of frauds because the remaining portion of the legal description was adequate to positively identify the property. *Flygare v. Brundage*, 302 P.2d 759, 761 (Wyo. 1956).

There is a rebuttable presumption that where a non-navigable watercourse or a street or road is a boundary between two parcels, the actual boundary is along the thread of the stream or the middle of the street, unless a contrary intention is contained in the description or a reservation. *Borushko*, 281 P.3d at 731; *Wilson v. Lucerne Canal & Power Co.*, 150 P.3d 653, 665 (Wyo. 2007). This general rule also applies to common walls. *Borushko*, 281 P.3d at 731; *Coumas v. Transcon. Garage*, 230 P.2d 748, 753 (Wyo. 1951).

**Caution:**

A deed is faulty if the metes and bounds description does not close on the north boundary of the description. *Arndt v. Sheridan Congregation of Jehovah's Witnesses*, 429 P.2d 326, 327–28 (Wyo. 1967). “A description by metes and bounds must be by continuous lines, one commencing where the other leaves off and the final line returning to the point of beginning.” *Davidson v. Wyo. Game & Fish Comm'n*, 238 P.3d 556, 561 (Wyo. 2010) (quoting III AMERICAN LAW OF PROPERTY 413 (1952)). A mere statement that land is of a certain quantity lying on a certain road, or stream, or at the intersection of certain roads, etc., is generally an insufficient description. *Noland v. Haywood*, 23 P.2d 845, 849 (Wyo. 1933).

“[I]f the description of property reserved out of the tract to be conveyed is indefinite and uncertain, then the general description of the land to be conveyed is indefinite and the entire conveyance must fail.” *Jackson v. Devenyns (In re Estate of Jackson)*, 892 P.2d 786, 789 (Wyo. 1995). However, where grantor makes “an exception which is described as a certain quantity out of a larger tract” of land, grantor may cure the uncertainty in the description of the exception “by electing to do so within a reasonable amount of time.” *Holland v. Windsor*, 461 P.2d 47, 51–52 (Wyo. 1969).

Parol evidence is admissible to identify described property, but parol evidence may not be utilized to supply a portion of the property description itself. *Noland*, 23 P.2d at 846–47, 849. A description which describes the “total acreage without any description of the location of the land involved, . . . is void.” *In re Estate of Jackson*, 892 P.2d at 790.

**References:**

TEXAS TITLE EXAMINATION STANDARDS 5.1 (2012).

LEWIS M. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 7.1 (1960).

**CHAPTER V****EXECUTION, ACKNOWLEDGMENT, AND RECORDATION****Standard 5.1. Defects and Omissions—10 Year Curative Act.**

No corrective action is necessary for defects, irregularities, or omissions in the execution or recording of an instrument of writing in any manner affecting title to real estate which has been recorded for a period of ten (10) years in the county clerk's office of the county where the real estate is situated.

**Comment:**

The defects, irregularities, and omissions which fall under the scope of the Wyoming Comprehensive Curative Act, sections 34-8-101 through -105 of the Wyoming Statutes, include "all defects and irregularities in respect to formalities of execution and recording, and all defects and irregularities in, as well as the entire lack or omission of attestation, acknowledgment, certificate of acknowledgments, or certificate of recording," regardless of whether the real estate involved is homestead property; and includes instruments which do not provide the marital status of any grantor. WYO. STAT. ANN. § 34-8-104 (2012).

"[N]otwithstanding any or all such defects, irregularities and omissions," such instruments are "fully legal, valid, binding and effectual for all purposes to the same extent as though such instrument had, [originally], been in all respects duly executed, attested, and acknowledged and recorded." WYO. STAT. ANN. § 34-8-103 (2012). Once validated through section 34-8-103, "such instrument shall impart notice to subsequent purchasers, encumbrancers, and all other persons" as if the instrument is validly recorded, "notwithstanding such defects, irregularities or omissions; and such instrument, the record thereof, or a duly authenticated copy, shall be competent evidence to the same extent as such instrument would have been competent if" originally valid. WYO. STAT. ANN. § 34-8-105 (2012).

Section 34-5-113 of the Wyoming Statutes also provides a curative measure for when a release of homestead or marital status of grantor is not indicated in an instrument.

All conveyances by which any estate or interest in real estate is created, alienated, mortgaged or assigned, or by which the title to any real estate may be affected . . . wherein there is no release

or waiver of homestead or the marital status of the grantor is not set forth [in the instrument], and which have been . . . recorded for a period of ten (10) years in the office of the county clerk of the county wherein such real estate is situated, it shall be conclusively presumed that said real estate was not used, occupied or claimed by the grantor, or the spouse of the grantor as a homestead at the time of said conveyance.

WYO. STAT. ANN. § 34-5-113 (2012).

**Caution:**

The Wyoming Comprehensive Curative Act does not define the words “defect,” “irregularity,” or “omission” and there is no case law which further defines these statutory terms. An examiner should use due caution when making a determination as to whether the imperfection found within an instrument falls within the scope of the Wyoming Comprehensive Curative Act. “A proper legal description of the property affected by the recorded instrument does not constitute a formality,” and therefore the Wyoming Comprehensive Curative Act “will not cure an error in the legal description,” notwithstanding the passage of ten (10) years after the instrument is recorded. *Bummer v. Collier*, 864 P.2d 453, 457 (Wyo. 1993).

**References:**

WYO. STAT. ANN. § 34-8-103 (2012).

**Standard 5.2. Delivery Date; Execution Date.**

Omission of the execution date from a conveyance or other instrument affecting title does not, in itself, impair marketability. Even if the execution date is of peculiar significance, an undated instrument will be presumed to have been timely executed if the dates of acknowledgment and recordation, and other circumstances of record, support that presumption.

Inconsistencies in recitals or indications of dates, as between dates of execution, attestation, acknowledgment, or recordation, do not alone impair marketability. Absent a peculiar significance of the dates, a proper sequence of formalities will be presumed notwithstanding such inconsistencies.

**Comment:**

The date of execution is not essential to the validity of an instrument. 23 AM. JUR. 2D *Deeds* § 18 (2012). Rather, the critical date to the effectiveness of a document is the delivery, which is normally not found in the instrument. *Hein v.*

Lee, 549 P.2d 286, 292 (Wyo. 1976); *accord* David v. Whitehead, 79 P. 19, 20 (Wyo. 1904) (“The real date of a deed is the time of its delivery,” notwithstanding the date of its execution.).

Regarding instruments that have been filed of record for ten (10) years or more, examiners should consider section 34-8-103 of the Wyoming Statutes which effectively cures defects, irregularities, or omissions in instruments due to failure to comply with Wyoming statutory law regarding the formalities of execution, attestation, or acknowledgment of the instrument. However, see the Caution to Proposed Standard 6.1 for further guidance.<sup>31</sup>

**Caution:**

If the record indicates that the date of an instrument has particular significance, for example for a priority or for an important presumption, an inconsistency or impossibility should not be disregarded.

**References:**

WYOMING TITLE STANDARDS 6.2 (1974, rev. 1980).

LEWIS M. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 6.2 (1960).

**Standard 5.3. Delivery; Delay in Recordation.**

In all cases, delivery is presumed for instruments acknowledged and recorded. Specifically, presumption of delivery is not overcome by delay in recordation, regardless of record evidence of the intervening death of the grantor. As an added, exceptional protection to their client, an examiner may become informed of the facts by certain inquiries.

**Comment:**

Delivery of an instrument is essential to its effectiveness, regardless of whether the instrument is recorded. *Lenhart v. Desmond*, 705 P.2d 338, 342 (Wyo. 1985) (citing 23 AM. JUR. 2D *Deeds* § 123); *Butler v. McGee*, 373 P.2d 595, 597 (Wyo. 1962). Execution of an instrument is not complete until delivery of the instrument, and delivery may be actual or constructive. *Crozier v. Malone*, 366 P.2d 125, 127 (Wyo. 1961). Legally binding delivery requires two essential elements: (1) the grantor transferring possession of the instrument, and (2) the grantee’s acceptance of the instrument. *Jenkins v. Miller*, 180 P.3d 925, 930 (Wyo. 2008) (citing *B-T Ltd. v. Blakeman*, 705 P.2d 307, 312–13 (Wyo. 1985)). Delivery is a question of fact, whereby “transferring, giving, or surrendering [an instrument] by the grantor

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<sup>31</sup> Chapter VI of the Proposed Standards is forthcoming in Part II of this commentary.

to the grantee contemplates parting with possession of the [instrument] with the intent that the [instrument] is to become presently operative as a conveyance” and effectively passes title to the grantee. *B-T Ltd.*, 705 P.2d at 312.

There is the presumption of delivery from the execution, acceptance, and recordation of a deed. *Snyder v. Ryan*, 270 P. 1072, 1075–76 (Wyo. 1928); *see also* *Forbes v. Volk*, 358 P.2d 942, 945 (Wyo. 1961).

**Caution:**

The presumption of delivery which arises from the grantee’s possession of a deed and the recording of a deed is not conclusive, and may be rebutted, for example, by a factual finding that possession was gained by grantee without knowledge of the grantor. *Lenhart*, 705 P.2d at 341. Proof necessary to rebut the presumption of delivery of a deed as between the grantor and the grantee is determined by a preponderance of the evidence. *Id.* (citing 26A C.J.S. *Deeds* § 204). However, clear and positive proof of non-delivery is required where the grantee asserts the deed was a gift, and where the rights of third parties have intervened. *Id.*

**References:**

WYOMING TITLE STANDARDS 6.3 (1974, rev. 1980).

LEWIS M. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 6.3 (1960).

**Standard 5.4. Federal Revenue Stamps.**

The absence of federal revenue stamps from an instrument does not impair marketability or require further inquiry from the examiner.

**Comment:**

There is a presumption, in the absence of evidence to the contrary, that the parties intended to and did obey the act of Congress requiring stamps to be fixed in the proper amount to a deed. *Russell v. Curran*, 206 P.2d 1159, 1167 (Wyo. 1949).

**References:**

WYOMING TITLE STANDARDS 6.4 (1974, rev. 1980).

LEWIS A. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 6.4 (1960).

**Standard 5.5. Corrective Instruments.**

A grantor cannot, subsequent to an effective, unambiguous instrument, execute another instrument making a substantial change in the name of the grantee, decreasing the size of the real property conveyed or the extent of the estate granted, imposing a condition or limitation upon the real property granted, or otherwise diminishing the first grant, even though the latter instrument purports to correct or modify the former. Marketability is dependent upon the effect of the first instrument and is not altered by the subsequent instrument.

**Comment:**

“When the grantor of a deed properly executes it and surrenders possession” of the instrument, “he is presumed to have divested himself of all title and interest he owned in the property.” *May v. McCormick*, 704 P.2d 709, 712 (Wyo. 1985). “Clear and convincing proof to the contrary” is required “before the deed can be properly set aside.” *Id.* The grantor has no right to alter or change the effect of a deed once it has been delivered and recorded. *Hansen v. Walker*, 259 P.2d 242, 245 (Kan. 1959). “It is conclusively presumed” that in a transaction to convey real estate, “the deed represents the final agreement of the parties.” *Bixler v. Oro Mgmt., L.L.C.*, 86 P.3d 843, 848 (Wyo. 2004).

**References:**

WYOMING TITLE STANDARDS 6.5 (1974, rev. 1980).

LEWIS A. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 6.5 (1960).

**Standard 5.6. Acknowledgments.**

Where a certificate of acknowledgment does not conform to the exact wording of the applicable statute, but demonstrates substantial compliance with the statutory requirements for acknowledgments, an examiner may not require corrective action. If a deed or other instrument contains an acknowledgment in substantial noncompliance with the applicable statute or does not contain any acknowledgment, an examiner should not require that such defects be cured if the instrument has been of record for at least ten (10) years and no adverse claim appears of record. Otherwise, the examiner should require a corrected acknowledgment and re-record the instrument, or require and record a corrected instrument. A proper jurat may substitute for an acknowledgment for instruments recorded on or after July 1, 2008.

**Comment:**

In general, an instrument which conveys real property is entitled to be recorded, only if acknowledged according to law. WYO. STAT. ANN. § 34-1-113 (2012). The proper forms for acknowledgments are expressed by statute. WYO. STAT. ANN. § 34-26-108 (2012). A jurat may substitute for an acknowledgment contained in instruments recorded on or before July 1, 2008. § 34-26-108(a) (iii). Generally, a jurat is a certificate signed by the notarial officer (notary), before whom an instrument is executed, at a single time and place stating that the instrument was subscribed and sworn to before the officer, by the person executing the instrument. *See generally id.* (providing a sample jurat form). The certificate of acknowledgment should include the following: (1) a signature and date by a notary; (2) identification of the jurisdiction in which the acknowledgment is performed; (3) the title of the office of the notary; (4) indication of the date of expiration, if any, of the commission of office (but omission of that information may subsequently be corrected); (5) the official stamp or seal of the notary; and (6) if the notary is a commissioned officer on active duty in the military service of the United States, the officer's rank. WYO. STAT. ANN. § 34-26-107(a) (2012). Wyoming statutory law provides a listing of notaries who may take acknowledgments and jurats. WYO. STAT. ANN. § 34-26-103 (2012).

The general rule is to construe certificates of acknowledgment liberally and, in the absence of a mandatory statute, to uphold them if they are in substantial compliance with statutory requirements as to form and content; strict conformance to the statute is not required. 1 AM. JUR. 2D *Acknowledgments* § 30 (2012). Under a previous version of the acknowledgment statute, the Wyoming Supreme Court held that a certificate of acknowledgment in substantial compliance with the requirements of the statute was sufficient. *Boswell v. First Nat'l Bank of Laramie*, 92 P. 624, 631 (Wyo. 1907) (holding the omission of the day and month of expiration of the notary's commission did not render the acknowledgment defective where information could be gathered from the rest of the document that the notary's commission had not yet expired). A certificate of acknowledgment should be liberally construed, and "where an omission can be supplied by a reasonable and fair construction of the whole instrument, the certificate of [acknowledgment] will be sufficient." *Id.* The form acknowledgments provided by the prior acknowledgment statute were a sufficient, but not a required, means of a proper acknowledgment. *Id.* Similarly, the current acknowledgment statute states that the forms provided for by the Wyoming Uniform Law on Notarial Acts "are sufficient" to achieve a proper acknowledgment if accompanied by additional information required by statute. WYO. STAT. ANN. § 34-26-108(a) (2012). But there is no express requirement that the statutorily provided forms be used.

The defects, irregularities and omissions covered by the Wyoming Comprehensive Curative Act “include all defects and irregularities in, . . . omission of attestation, acknowledgment, certificate of acknowledgments, or certificate of recording.” WYO. STAT. ANN. § 34-8-104 (2012).

An executed, although unacknowledged, instrument is valid between the parties thereof. *Steadman v. Topham*, 338 P.2d 820, 825 (Wyo. 1959); *see also* *Jedrzejewski v. Bierma* (*In re* Estate of *Jedrzejewski*), 197 P.3d 1254, 1257 (Wyo. 2008) (citing *Frank v. Hicks*, 35 P. 475, 477 (Wyo. 1894)); *N. Am. Uranium, Inc. v. Johnston*, 316 P.2d 332, 343 (Wyo. 1957) (stating an instrument conveying mining claims that was not acknowledged was, nevertheless, binding as between the parties of the instrument.); *Ohio Oil Co. v. Wyo. Agency*, 179 P.2d 773, 776 (Wyo. 1947). This rule applies to a conveyance of water rights. *Whalon v. N. Platte Canal & Colonization Co.*, 71 P. 995, 999–1000 (Wyo. 1903).

In courts within the State of Wyoming, the duly executed certificate of a notary establishes “presumptive evidence of the facts contained in such certificate; provided, that any person interested as a party to a suit may contradict, by other evidence, the certificate.” WYO. STAT. ANN. § 32-1-107 (2012). “All deeds, conveyances or instruments of any character, concerning any interest in lands within this state,” which are properly acknowledged may be read into evidence without additional proof of the execution of said document. WYO. STAT. ANN. § 34-1-123 (2012); *Atlas Realty Co. v. Rowray*, 65 P.2d 1122, 1127–28 (Wyo. 1937).

### **Caution:**

The so-called “substantial compliance” doctrine has been followed by several jurisdictions. In *Boswell*, the Wyoming Supreme Court appears to have adopted the doctrine in some instances. *Boswell v. First Nat’l Bank of Laramie*, 92 P. 624, 631 (Wyo. 1907). The Wyoming Supreme Court has never adopted the doctrine in interpreting the most recent Wyoming Uniform Law on Notarial Acts. WYO. STAT. ANN. § 34-26-101 through -109 (2012). The previous *Boswell* decision by the Wyoming Supreme Court, which indicates that the Wyoming Supreme Court would generally follow the substantial compliance doctrine, has not been followed, nor overruled by subsequent cases. *See* 92 P.2d 624. However, an acknowledgment that does not contain the identity of the notary is defective. *Condict v. Ryan*, 333 P.2d 684, 686 (Wyo. 1959). Under previous versions of the acknowledgment statute, an acknowledgment was held substantially noncompliant with the statute, and therefore defective, because of a failure to include the statutorily mandated recitation that the grantor executed the instrument, acknowledging that they did the same and did so by their free act and deed. *York v. James*, 165 P.2d 109, 115 (Wyo. 1946).



An unrecorded instrument is void as to good faith subsequent purchasers, or encumbrancers, without notice, who record their conveyances first. WYO. STAT. ANN. § 34-1-120 (2012). Only subsequent purchasers for value and subsequent creditors without notice of conflicting claims may challenge the validity of a deed because of a missing or defective acknowledgment. *Black v. Beagle*, 139 P.2d 439, 445 (Wyo. 1943). If an instrument, requiring acknowledgement for valid recordation, is without an acknowledgment and is admitted to record, the recordation does not afford constructive notice of the existence and contents of the instrument. *Thomas v. Roth*, 386 P.2d 926, 930 (Wyo. 1963). In order to impart constructive notice, the instrument must be filed in the county where the real property is located. WYO. STAT. ANN. § 34-1-118 (2012). Filing or leaving a deed in any other office (e.g., the United States Bureau of Land Management) does not constitute constructive notice. *Torgeson v. Connelly*, 348 P.2d 63, 66 (Wyo. 1959).

The Wyoming Comprehensive Curative Act does not define what constitutes a defect or irregularity in an attestation, acknowledgment, certificate of acknowledgment, or certificate of recording. WYO. STAT. ANN. § 34-8-104 (2012). Therefore, caution should be exercised in reliance on the provisions thereof.

#### **References:**

WYOMING TITLE STANDARDS 6.6, 6.7 (1974, rev. 1980).

LEWIS A. SIMES & CLARENCE B. TAYLOR, MODEL TITLE STANDARDS 6.6 (1960).

## VI. CONCLUSION

Title standards are a necessary and functional tool for efficient modern land transactions. In 1946, the Wyoming State Bar recognized the need for such standards. The State Bar last revised the standards in 1980. This commentary constitutes Part I of III in the proposed updating of the Wyoming Title Standards. The authors hope that this commentary will serve as a clarion call to all interested parties to continue the extensive and arduous process of accomplishing this monumental undertaking.

## APPENDIX I

STANDARDS FOR TITLE EXAMINATION (1946, REV. 1949)<sup>32</sup>

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<sup>32</sup> Reproduced in entirety, with minimal typographical and formatting changes, from the *Wyoming Law Journal*. See *Standards for Title Examination*, *supra* note 5, at 179–83. All citations are as produced in the original.

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## STANDARDS FOR TITLE EXAMINATION

(Standards 1 through 8 adopted at 1946 Annual Meeting; Standards 9 through 23 adopted at 1949 Legislative Meeting)

**STANDARD NUMBER 1. (*no title*)**

Problem: When an attorney discovers a title situation which he believes should be corrected, what step should he take first if he has knowledge that the same title has been examined by another attorney who has not objected to the defect?

Answer: He should communicate with the previous examiner, explain to him his objection and afford opportunity for discussion.

**STANDARD NUMBER 2. NAMES AND ABBREVIATIONS.**

Problem: Should common abbreviations, derivatives and nicknames for Christian names, such of Geo. for George, Jno. for John, Chas. for Charles, be accepted where the chain of title contains such names spelled in full?

Answer: They should be accepted.

Comment: Absolute certainty with reference to the identity of parties appearing in a chain of title is impossible to attain. All that should be required is reasonable certainty.

**STANDARD NUMBER 3. NAMES—CORPORATIONS.**

Problem: Where a corporation appears in the chain of title, should the addition or omission of the word "The" before the name of the company and the use of "Co." for the company or "Corp." for corporation make a difference in the title?

Answer: No.

**STANDARD NUMBER 4. STRANGER TO TITLE—INSTRUMENT BY.**

Problem: If a deed or encumbrance appears in the chain of title executed by one who has no record interest, is such deed or encumbrance to be considered a defect in the title?

Answer: No.

**STANDARD NUMBER 5. ACTIONS—EFFECT OF DEFECTS.**

Problem: What is the effect of defects not involving jurisdiction of the court in actions quieting or affecting title, or in the foreclosure of liens?

Answer: Such errors do not render title defective, and should be disregarded. Among commonly found errors of this kind are: (a) Misjoinder of parties; (b) misjoinder of actions; (c) existence of ground of demurrer or motion to dismiss (other than on jurisdictional grounds); (d) existence of ground for motion for change of venue, if no such motion was filed.

**STANDARD NUMBER 6. RELEASE OF LIEN—  
RE-RECORDED ENCUMBRANCE.**

Problem: An encumbrance appears of record followed by a similar instrument, in which it is stated that the latter is given to correct some defect in the former, or which appears from the record to be a re-recording of the former. A release subsequently appears of record releasing one encumbrance, but not describing specifically the other. Is such release sufficient to release both?

Answer: Yes.

Note: It is considered better practice that the release describe and expressly release both encumbrances.

**STANDARD NUMBER 7. RELEASE OF LIEN—ERRORS IN RECITALS.**

Problem: If a release of an encumbrance contains errors in its recitals as to date of record, or book or page of record, or date or parties to such encumbrance, is such release sufficient?

Answer: If there is sufficient correct data given in such release to identify reasonably the encumbrance intended to be released, it should be approved.

**STANDARD NUMBER 8. REVENUE STAMPS.**

Problem: What is the effect of lack of revenue stamps on a deed?

Answer: The omission of revenue stamps on a deed does not affect the marketability of the title.

**STANDARD NUMBER 9. AFFIDAVIT—INTERESTED PARTY.**

Problem: Should the affidavit of an interested party be accepted as curative evidence when his credibility and knowledge of the facts involved seem evident?

Answer: Yes.

Comment: In many instances, interested parties are the only ones capable of supplying the necessary information, and this evidence should not be rejected upon the sole ground of interest.

**STANDARD NUMBER 10. ASSIGNMENT OF RENTS—RELEASE.**

Problem: When there has been a release of an encumbrance securing a debt, for which an assignment of rents has been given as additional security, is it necessary to procure a separate release of the assignment of rents?

Answer: Not when the assignment provides that any release of the encumbrance shall operate as a release of the assignment, or where it appears from either instrument that the rental assignment is given as additional security for the debt secured by the encumbrance.

**STANDARD NUMBER 11. CERTIFICATE OF  
ACKNOWLEDGMENT—FORM.**

Problem: Is it required that a certificate of acknowledgment must be in the identical form prescribed in Section 66-211, Wyoming Compiled Statutes, 1945?

Answer: No.

Comment: Substantial compliance is sufficient, as held in *Boswell vs. First National Bank of Laramie*, 16 Wyo. 161, 92 Pac. 624, 93 Pac. 661. However, an essential departure will render the acknowledgment void. See *York vs. James*,...Wyo...., 165 Pac. 2d, 109.

**STANDARD NUMBER 12. CORPORATION DEED—EXECUTION.**

Problem: An instrument reciting in the body that is executed by "X Corporation" is signed "B. C., President" without the name of the corporation in the signature. The corporate seal is attached. The acknowledgment is "by B. C. as president of X Corporation". Otherwise the acknowledgement is in the form prescribed by statute. Should this instrument be regarded as properly executed by X Corporation?

Answer: Yes.

**STANDARD NUMBER 13. CORPORATIONS—RECORD OF  
INCORPORATION UNNECESSARY**

Problem: Where a conveyance to a corporation appears in the chain of title and there is a later conveyance by such corporation to a third person, and it appears that the corporation grantor is the same entity as the corporation grantee, is it necessary that the abstract contain a record of the certificate or articles of incorporation of such corporation?

Answer: No.

**STANDARD NUMBER 14. CURATIVE ACT OF 1947.**

Problem: When an instrument affecting title to real estate has been recorded for a period of ten years in the office of the County Clerk of the county in which the real estate is situated, does any one of the following defects or irregularities affect the validity of the instrument?

- (1) Lack of witness, when witness was required prior to enactment of Chapter 79, Session Laws of Wyoming, 1941, or prior to enactment of Chapter 76, Session Laws of Wyoming, 1943;
- (2) Omission of corporation seal;
- (3) Omission of seal of the notary public, or other official taking the acknowledgment;

- (4) Failure of instrument to disclose date of expiration of notary's commission;
- (5) Date of expiration of notary's commission show as prior to date acknowledgment;
- (6) Lack of, or erroneous date in instrument or acknowledgment, or in both?

Answer: No.

#### **STANDARD NUMBER 15. DEED TO ESTATE OF DECEDENT.**

Problem: What is the effect of deed conveying real estate to the "Estate of John Smith, Deceased"? After such a deed, how must a marketable title be conveyed?

Answer: There is no such entity as the "Estate of" a named person; therefore, a deed purporting to convey real estate, naming as the only grantee "Estate of John Smith, deceased," is inadequate, because it names no grantee capable of taking title. In such case, deed should be obtained from the grantor or his successors in title, and, in order to obtain possible equitable interests, deed also should be obtained from each person who might have obtained some interest in the real estate if the conveyance had been valid.

#### **STANDARD NUMBER 16. DELIVERY OF DEEDS—PRESUMPTION.**

Problem: Should the presumption of delivery, resulting from the acknowledgment and recording of a deed, be relied upon despite the fact that it appears the deed was recorded after the death of the grantor, and regardless of the time which may have elapsed between the date of the deed and the recording thereof?

Answer: Yes.

#### **STANDARD NUMBER 17. DORMANT JUDGMENTS.**

Problem: Is a general judgment upon which no execution has been issued for five years to be treated as a lien or defect of title?

Answer: No.

Comment: This standard applies only to general judgments, and has no application to judgments or decrees of foreclosure of specific liens, such as mortgage, assessment or tax liens.

#### **STANDARD NUMBER 18. EXPIRATION OF TERM OF OFFICE—WHEN UNNECESSARY TO STATE.**

Problem: Where an acknowledgment is taken by an official other than a notary public, justice of the peace, or Commissioner of Deeds for Wyoming, is it necessary that there shall be added to his certificate the date when his commission or term of office expires?

Answer: No.

Comment: Section 66-110, Wyoming Compiled Statutes, 1945, requires a showing as to expiration of commission or term of office only when the acknowledgment is before a notary public, justice of the peace, or Commissioner of Deeds for Wyoming.

**STANDARD NUMBER 19. FORECLOSED MORTGAGE—LACK OF RELEASE.**

Problem: Where a mortgage in the chain of title has been properly foreclosed, is the lack of a release of such mortgage a defect in the title?

Answer: No.

**STANDARD NUMBER 20. MECHANICS', MINERS', OR OIL WELL DRILLERS' LIENS—NOT FORECLOSED.**

Problem: Does an unreleased materialman's, mechanic's, miner's or oil well driller's lien, after expiration of the time within which suit may be brought to foreclosure the same, constitute an encumbrance or cloud on the title?

Answer: No.

**STANDARD NUMBER 21. NAME—EVIDENCE OF CHANGE BY MARRIAGE.**

Problem: Mary Jones, owning title in that name, marries John Smith. The marriage certificate is not recorded. How should her identity be shown in an instrument executed after marriage?

Answer: By the naming of such grantor in the body of the instrument and acknowledgment as Mary Smith, formerly Mary Jones.

**STANDARD NUMBER 22. RELEASE BY ONE OF TWO OR MORE MORTGAGES.**

Problem: Where a mortgage is given to two or more persons jointly, or to two or more named as members of a co-partnership, is a release given by any one of the persons named a sufficient release of the mortgage?

Answer: Yes.

**STANDARD NUMBER 23. STREETS AND ALLEYS—VACATION.**

Problem: The record reveals the vacation of a public highway, street or alley, or a portion thereof. Subsequently, an abutting owner conveys by warranty deed in the usual form, describing only the original tract, omitting description of the vacated strip. By such deed, does he convey the portion of the property which he acquired as a result of the vacation?

Answer: No.



## APPENDIX II

TITLE STANDARDS OF THE WYOMING STATE BAR  
(1974, REV. 1980)<sup>33</sup>

## Wyoming State Bar Convention

## Report of the Title Standards Committee

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<sup>33</sup> Reproduced in entirety, with minimal typographical and formatting changes, from the original loose-leaf printing and excerpts from the *Land and Water Law Review*. See WYOMING TITLE STANDARDS, *supra* note 7 (containing the entirety of the 1974/1980 Wyoming Title Standards); see also *Appendix III: Wyoming Title Standards*, *supra* note 7, 399–409 (publishing only the 1980 addition of Chapter 4 to the Wyoming Title Standards). All citations are as produced in the original.

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## TITLE STANDARDS OF THE WYOMING STATE BAR

## CHAPTER I

## THE ABSTRACT

## STANDARD 1.1

**ABSTRACT IN LONGHAND:** An abstract written in longhand is acceptable if legible and not mutilated.

**Similar Standard:** Model Title Standard 1.1.

## STANDARD 1.2

**MIMEOGRAPHED OR PHOTOSTATIC COPY:** Copies of abstracts made by mimeographing, photostatic process or other similar process are acceptable if properly certified by separate certificates to be correct and complete abstract: [*sic*]

**Similar Standard:** Model 1.2.

## STANDARD 1.3

**RE-CERTIFICATION UNNECESSARY:** It is unnecessary that attorneys require the entire abstract to be certified every time an extension is made. For the purpose of examination, an abstract should be considered to be sufficiently certified if it is indicated that the abstracters were bonded at the dates of their respective certificates. It is not a defect that at the date of the examination the statute of limitations may have run against the bonds of some of the abstracters.

**Similar Standard:** Model 2.2.

## STANDARD 1.4

**ABSTRACT COMPLIED BY TITLE OWNER:** Where an abstractor has certified an abstract of title to real estate in which he himself is interested, it is not negligence on the part of an examiner to accept such abstract.

## CHAPTER II

## THE TITLE EXAMINER

## STANDARD 2.1

**EXAMINING ATTORNEY'S ATTITUDE:** The purpose of the examination of title and of objections, if any, shall be to secure for the examiner's client a title

which is in fact marketable and which is shown by the record to be marketable, subject to no other encumbrances than those expressly provided for by the client's contract. Objections and requirements should be made only when the irregularities or defects reasonably can be expected to expose the purchaser or lender to the hazard of adverse claims or litigation.

**Similar Standard:** Model 2.1.

### STANDARD 2.2

**PRIOR EXAMINATION:** When an attorney discovers a situation which he believes renders a title defective and he has notice that the same title has been examined by another attorney who has passed the defect, it is recommended that he communicate with the previous examiner, explain to him the matter objected to and afford opportunity for discussion, explanation and correction.

**Similar Standard:** Model 2.2 and Wyo., 1.

### STANDARD 2.3

**REFERENCE TO TITLE STANDARDS IN LAND CONTRACT:** An attorney drawing a real estate sales contract should recommend that though terms of the contract provide that marketability be determined in accordance with title standards then in force and that the existence of encumbrances and defects, and the effect to be given to any found to exist, be determined in accordance with such standards.

**Similar Standard:** Model 2.3.

## CHAPTER III

*(Chapter III omitted in original for undisclosed reasons)*

## CHAPTER IV

*(title omitted in original for undisclosed reasons)*

Note: Chapter 4 addresses the effects of the Wyoming Marketable Title Act (34-10-101 et. seq.). It should be noted that there is extensive interdependence among the provisions of the Act. Because of the structure of the Act, the standards contained in this chapter are also interdependent and should be read in conjunction with all others. The title examiner is therefore cautioned to consider the interrelationships among both the provisions of the Act itself and the title standards which follow before selecting a single provision of either the Act or the standards to apply to a particular title problem.

Additionally, it should be noted that although the Act applies to all real property interests (with the exception of those specified in section 34-10-104 of the Act), the limited scope of the Act (which results from application of the provisions of the Act from the “root of title” only, the notice and possession provisions and various other exceptions) can create a title which is a “Marketable Record Title” under the Act but which is still subject to various legal defects not cured by the Act, thereby leaving the title unmarketable in the traditional legal sense of the term.

#### STANDARD 4.1

**REMEDIAL EFFECT:** The marketable title Act is remedial in character and should be relied upon as a cure or remedy for such imperfections of title as fall within its scope.

**Authority:** Wyoming Statutes [sic] § 34-10-105

**Similar Standards:** Model 4.1, Kansas 23.1, Michigan 1.1, Utah 45

#### STANDARD 4.2

**REQUISITES OF MARKETABLE RECORD TITLE:** A “Marketable Record Title” under the Marketable Title Act exists only where (1) a person has an unbroken chain of title of record extending back at least forty years; **and** (2) nothing appears of record purporting to divest such person of title.

Such “Marketable Record Title” is not necessarily free of legal defects, but is subject to interests that may attach under the provisions of standard 4.6.

**Authority:** Wyoming Statute § 34-10-103

**Similar Standards:** Model 4.2, Utah 46, Kansas 23.2

**NOTE:** These two requirements are elaborated in standards 4.4 and 4.5.

#### STANDARD 4.3

**DEFINITION OF RECORD:** For purposes of the Marketable Title Act, “records” includes probate and other official public records, as well as records in the office of the County Clerk and Ex Officio Register of Deeds.

**Authority:** Wyoming Statute § 34-10-101(ii)

#### STANDARD 4.4

**UNBROKEN CHAIN OF TITLE OF RECORD:** “An Unbroken Chain of Title of Record,” within the meaning of the Marketable Title Act may consist of (1) a single conveyance or other title transaction which purports to create an interest and which has been a matter of public record for at least forty years; or (2) a connected series of conveyances or other title transactions of public record in which the root of title has been a matter of public record for at least forty years.

**Authority:** Wyoming Statute § 34-10-103

**Similar Standard:** Model 4.3, Michigan 1.3, Utah 47, Kansas 23.3

**NOTE:** For a definition of “root of title,” see Wyoming Statute § 34-10-101(v).

**Illustration 1:** Assume A is grantee in a deed on record for at least 40 years, and that nothing affecting the described land has been recorded since then. Forty years later A has an unbroken chain of title of record. Instead of a conveyance, the title transaction may be a decree of a probate court or a judgment quieting title or assigning title in a district court which was entered in the court records 40 years ago. Likewise, 40 years later A has an unbroken chain of title.

**Illustration 2:** Suppose that the chain of title is complete down to Frank Jones. The next conveyance is from several persons and spouses who are strangers to the title who convey this property to A. The conveyance to A is over 40 years old and A now claims to be the owner. A has an unbroken chain for the last forty years. The result in the above example is the same if A conveyed to B, and B to C, and C now claims to be the owner because there is a connected series of conveyances. The result in the above example is the same if there is a valid probate court proceeding for the estate of A which assigned this property to W, who now claims to be the owner.

**Illustration 3:** Suppose the chain of title is complete down to Frank Jones, and the next entry is an executor’s deed which conveys this property to A. The executor’s deed merely recites “John Roberts, executor of the state of Frank Jones, deceased,” and is executed properly. The probate court proceedings are not identified and there is nothing further shown. The executor’s deed is 40 years old. A has conveyed to B and B to C who now claims to be the owner. C has an unbroken chain of title for the last 40 years.

**Illustration 4:** Suppose that title is complete in Frank Jones and over 40 years ago there appears a conveyance from Mike W. Roberts, attorney-in-fact for Frank Jones, in which the real estate is conveyed over to A. There is no power of attorney

shown for Mike W. Roberts anywhere on record or no other reference to any power of attorney. Assuming no subsequent instruments are recorded, A now has an unbroken chain of title for 40 years.

**Illustration 5:** Suppose title is complete in Frank Jones, and over 40 years ago there appears a conveyance to A from X and Y, who recite in the deed that they are assignees in bankruptcy of Frank Jones. There is nothing on record to show any conveyance to the grantors from Frank Jones or any bankruptcy proceedings or anything else to indicate how X and Y became vested with title as assignees in bankruptcy for Frank Jones. However, assuming no subsequent instruments are recorded, A has an unbroken chain of title for the last 40 years.

**Illustration 6:** Suppose that the title is complete in the Wyoming Land Corporation, who acquired the property over 40 years ago. Subsequently, and over 40 years ago, there is a deed from several persons who merely recite in the deed that they are owners of all of the corporate stock of said Wyoming Land Corporation, which has now been dissolved. There is nothing else on record concerning the Wyoming Land Corporation. Since the deed to A was given over 40 years ago, A has an unbroken chain of title.

**Illustration 7:** Suppose A is the grantee in a deed, executed and delivered over 40 years ago but recorded less than 40 years ago. A does not have an “unbroken chain of title of record” since 40 years have not elapsed subsequent to the recording of his deed. He will not have the “unbroken chain” required by the statute until 40 years have elapsed from the date of its recording.

#### STANDARD 4.5

**MATTERS PURPORTING TO DIVEST:** Matters “Purporting to Divest” within the meaning of the Marketable Title Act are those matters appearing of record which, if taken at face value, warrant the inference that the interest has been divested.

**Authority:** Wyoming Statute § 34-10-103

**Similar Standards:** Model 4.4, Michigan 1.4, Utah 48, Kansas 23.4

**Illustration 1:** The most obvious case of a recorded instrument purporting to divest is a conveyance to another person. Assume that the title is complete in A who acquired this property over 40 years. The records show that A conveyed to B within the last 40 years. Although A acquired the property over 40 years ago, the deed which he gave to B within the last 40 years is an instrument which purported to divest the title and broke the chain; and therefore, A could not have a marketable record title.



**Illustration 2:** Suppose that title is complete in A who acquired the property over 40 years ago. A deed for the same land from X to Y was recorded 20 years ago, and it contains the following recital: “being the same land heretofore conveyed to me by A.” Y now attempts to convey a clear title, claiming a 40-year chain starting with A who acquired it over 40 years ago. There is a break in the chain of title since there is no deed from A to X, and the instrument from X to Y was an instrument purporting to divest within the terms of the Act. Therefore, neither A nor Y can claim a good title under the Marketable Title Act.

**Illustration 3:** Suppose that A acquired a good title over 40 years ago. Twenty years ago there is a conveyance from A to X, but the conveyance was executed by B, Attorney-in-fact for A. There is no power of attorney on record from A to B. This is a break in the title, and this is an instrument purporting to divest within the terms of the Act. There is no marketable record title in A or X.

**Illustration 4:** Suppose that A has acquired title over 40 years ago. Twenty years ago A conveyed the property to X, and in this deed there is a recital as follows: “Subject to a life estate in C, the mother of A.” X now attempts to give a clear title, claiming the 40-year chain beginning with A. The reservation in the deed from A to X is an instrument purporting to divest within the terms of the Act, and X cannot give a good title until the life estate of C has been determined.

**Illustration 5:** Suppose that A acquired title over 40 years ago. A conveyed to B 20 years ago, and 15 years ago B conveyed to C. In this conveyance to C there is a recital as follows: “Subject to a mortgage on this property to the XYZ Finance Company.” There is no mortgage on record on this property to the XYZ Finance Company, and there is no other reference to a mortgage to said XYZ Finance Company. C now is attempting to convey a good merchantable title claiming a 40-year unbroken chain from A. C does have an unbroken chain of title. However, it is subject to the possibility that the XYZ Finance Company might have an interest in this property by virtue of an unrecorded mortgage. The title examiner is put on notice to determine what interest the XYZ Finance Company might have in the property.

**Illustration 6:** Suppose A is the last grantee in a recorded chain of title, the last deed of which was recorded over 40 years ago. A deed of the same land was recorded 40 years ago, from X to Y, which recites that A died intestate and that X is his only heir. The deed from X to Y is one purporting to divest within the terms of the Act. This is the conclusion to be reached whether the recital of heirship is true or not. A recorded instrument may also purport to divest even though there is not a complete chain of record title connecting the grantee in the divesting instrument with the 40-year chain.

**Illustration 7:** Suppose that A is the last grantee in a chain of title which he acquired over 40 years ago. Prior to the expiration of 40 years since A acquired his title, there was recorded an affidavit by X, a stranger to the title, which recited that X and his predecessors have been “in continuous, open, notorious and adverse possession of said land as against all the world for the preceding thirty years.” This is an instrument purporting to divest A of his interest, within the terms of the Act.

**Illustration 8:** Suppose A acquired title 40 years ago. Twenty years ago there was recorded a mortgage from X to Y of the same land, containing covenants of warranty. The mortgage is not an instrument purporting to divest within the terms of the Act.

#### STANDARD 4.6

##### **EFFECT OF MARKETABLE RECORD TITLE ON PRIOR INTEREST:**

A person who has marketable record title in any interest in land, as stated in Standard 4.2, holds free from: any other interests, claims or charges, the existence of which depends upon any act, transaction, event or omission which antedates the beginning of the unbroken chain of record title extending back at least forty years: provided that (1) such unbroken chain of record title includes no reference containing a specific identification of a recorded title transaction creating such other interest, claim or charge and no notice of claim based thereon has been filed in accordance with Wyoming Statutes § 34-10-106 and § 34-10-107 and (2) such unbroken chain of record title is not made subject to such other interest, claim or charge by any provision of Wyoming Statutes [sic] § 34-10-104.

**Authority:** Wyoming Statute § 34-10-105

**Similar Standard:** Michigan 1.6

**NOTE:** The interests to which an unbroken chain of record title may be subject are discussed in Standards 4.7, 4.8, 4.9, 4.10, and 4.11.

**Illustration 1:** Suppose 43 years ago a deed was recorded conveying a certain tract of land “to A for life, remainder to B and his heirs.” A year later (42 years ago) a mortgage was recorded from B to X in which B mortgaged his remainder “subject to A’s life estate.” Forty years ago a deed was recorded in which B conveyed his remainder to C in fee simple, there being no reference to the mortgage to X. Forty years later, A, the life tenant, still being alive, C has a marketable record title to the remainder under the terms of the Act, and X’s mortgage is extinguished. But, being a remainder subject to a life estate, no one but the life tenant is likely to desire to buy it, and it cannot be said to be commercially marketable. Note that the title cannot be commercially marketable to any greater extent than the extent to which such interest is marketable in the first instance.

**Illustration 2:** Suppose A conveyed a tract of land to B by deed recorded 45 years ago which deed contained one of the following: (a) a condition subsequent that the grantor or his heirs could re-enter in the event of a breach of certain conditions specified in the conveyance; or (b) a special limitation that the land was conveyed “so long as” it was used for a specified purpose. Forty years ago B conveyed the tract of land to C by recorded deed, which deed made no mention of, or reference to, such condition or limitation. Since the recording of the deed from B to C, the chain of title contains no reference to such interest or notice of claim based thereon. At the end of the 40 year period since the recording of the deed from B to C, C holds title to the land free from the condition or limitation since it does not appear in the muniments of which his 40-year chain of record title is formed.

**Illustration 3:** Suppose A conveyed a tract of land to B by deed recorded 50 years ago which deed contained one of the following: (a) a condition subsequent that A or his heirs could re-enter in the event of a breach of certain conditions specified in the conveyance; or (b) a special limitation that the land was conveyed “so long as” it was used for a specified purpose. By deed recorded five years later (45 years ago) B conveyed the land to C subject specifically to the condition or limitation contained in the deed from A to B. C then conveyed the land to D by deed recorded 20 years ago, which deed made no mention of, or reference to, such condition or limitation. No other instrument affecting the land has been recorded since the deed from C to D. D is in possession. Although D holds marketable record title to the tract of land in question, he does not hold such title free from the condition or limitation because reference thereto appears in the deed from B to C which is one of the muniments of which his unbroken 40-year chain of title is formed.

**Illustration 4:** Suppose A conveyed a tract of land to B by deed recorded 50 years ago, which contained a condition subsequent that A or his heirs could re-enter in the event of a breach of certain conditions specified in the conveyance. B conveyed the land to C by deed recorded 45 years ago, which deed made no mention of, or reference to, such condition. Forty-three years ago, a deed to the land was recorded from X, a stranger of title, to Y. Subsequently, by deed recorded 20 years ago, C conveyed the tract of land to D, subject specifically to the condition subsequent contained in the A-B deed recorded 50 years ago. The tract of land in question is unoccupied. At the present time, both D and Y have marketable record titles within the meaning of the Act. D’s title is, however, subject to the condition subsequent for the reasons set forth in Illustration 3 above. Y’s title is not subject to such condition, because it does not appear in the deed to him, which is the only instrument contained in his unbroken chain of title of record.

**Illustration 5:** Suppose A was the grantee in a chain of record title of a tract of land, a deed to which was recorded 50 years ago. Forty-eight years ago, a mortgage of the same land from A to X was recorded. Forty-four years ago a mortgage of

the same land from A to Y was recorded. Forty-one years ago a deed of the same land from A to B in fee simple absolute was recorded, which made no mention of the mortgages. Twenty years ago, Y recorded a notice of his mortgage, as provided in Wyoming Statutes §§ 34-10-106 and 34-10-107. X did not record any notice. B has an unbroken chain of title of over 40 years. Therefore, B has a marketable record title which is subject to Y's mortgage but not to X's mortgage. B's root of title is the deed from A to B recorded 41 years ago. X and Y had 40 years from the date of recording of B's root of title instrument to record a notice for the purpose of preserving their interests. If X had filed a notice after the running of the 40 year period, it would have been a nullity, since his interest was already extinguished.

**Illustration 6:** Suppose A has the 40-year unbroken record chain of title. Twenty years ago there was filed an affidavit by X stating the following: "I hereby give notice that I have entered into a contract to buy from A a tract of land three acres in size south of the city of Gillette, Wyoming." There is no further description shown in the affidavit, although it was subscribed, sworn, and recorded. This affidavit would not be effective to establish a notice as set forth in Wyoming Statute § 34-10-107. It appears that the land which A owns is 160 acres in size. This affidavit should not be entitled to be recorded in the notice index as set forth in § 34-10-107.

#### STANDARD 4.7

**DEFECTS IN THE FORTY-YEAR CHAIN:** If the recorded instrument which constitutes the root of title, or any subsequent instrument in the chain of record title required for a marketable record title under the terms of the Act, creates interests in third parties or creates defects in the record chain of title, then the marketable record title is subject to such interests and defects.

**Authority:** Wyoming Statute § 34-10-104

**Similar Standards:** Model 4.6, Kansas 23.5, Utah 50

**Illustration 1:** Over 40 years ago A conveyed his land to B; and in this conveyance there is the following reservation: "The grantor A does hereby reserve to himself and his heirs and assigns forever all of the mineral interests which lie under said land." B now claims that he has a clear title and that A has not exercised any right to enjoy the mineral rights. The title is good in B, but it is subject to the reservation of the mineral interests in A, and the 40-year chain does not bar the reservation of A.

**Illustration 2:** Over 40 years ago A, who was a record title holder at that time, conveyed the property to B. In this deed to B there is a reservation as follows: "The grantor A does hereby reserve unto himself and his heirs and assigns a roadway easement over the east 40 feet of this tract." B now attempts to convey to

C, claiming that said roadway was never utilized by A and there is no road there. The 40-year chain of title is subject to the prior reservation of a road easement by A, the grantor in the deed, and B cannot convey a clear title to this tract of land without clearing up the interest of the previous reservation of the road easement in A. The above two illustrations, the mineral reservation and the roadway easement, are interests and defects which are inherent in the muniments of which such chain of record title is formed as set forth in Wyoming Statute § 34-10-104(a)(i).

**Illustration 3:** Suppose that A acquired title to a tract of land over 40 years ago, and in this deed to A there appears the following statement: “Subject to a deed to X of the mineral interests in this property.” The deed is not further identified, and there is no deed to any mineral interests to X on record. A now attempts to convey claiming a 40-year chain. The reference to a deed to X of a mineral interest is a general reference and is not specific enough to preserve the interest under Wyoming Statute § 34-10-104(a)(i). However, read as a whole, the root purports to create no more than a surface interest and the marketable record title can apply to no greater interest.

**Illustration 4:** Suppose that A acquired title to a tract of land over 40 years ago; but in this deed to A, there appears the following recital: “The grantors in this deed, John Smith and Mary Smith, hereby reserve unto themselves a life estate in this property, so long as they shall live” or other wording to that effect creating life interest. A is now attempting to convey good title and there is nothing on record to indicate any termination of the life estates of John and Mary Smith. The marketable record title of A shall be subject to the life estates of John and Mary Smith. The title examiner should require conveyances from John and Mary Smith or affidavits of death obtained and recorded.

**Illustration 5:** Suppose that there is a conveyance to A which was given over 40 years ago, and in this deed there is contained the following reservation: “The grantor, Frank Jones, hereby reserves unto himself, his heirs and assigns, the right to go upon said property and remove sand and gravel along Sand Creek which runs through this property.” The marketable title of A shall be subject to this reservation by Frank Jones.

**Illustration 6:** A acquired title over 40 years ago and now attempts to convey this property to C. X has been using the east 15 feet of this property as a driveway, and the driveway is readily apparent to anyone who makes an inspection of the properties since it leads to X’s garage and cuts across the yard of A. This driveway is a right arising from adverse possession by the user of this driveway even though there is no recorded easement on record. This illustration indicates that the Marketable Title Act recognizes acquisition of title by adverse possession (See Wyoming Statute § 34-10-104(a)(iii)). However, if X wishes to perfect and

establish a marketable title to his easement, he should either obtain a written easement from A to his 15-foot tract that he is using as a driveway, or else establish a 10-year adverse possession by quiet title suit.

**Illustration 7:** A acquired title over 40 years ago, and he now attempts to convey by warranty deed to B. However, ten years ago X filed an affidavit in which he referred to this property specifically; and in this affidavit X says that he is in possession of this property by virtue of a contract of sale entered into between A and X. There is nothing further shown concerning any contract of sale or the interests of X, the purchaser under said contract of sale. This is a notice in accordance with Wyoming Statute § 34-10-104(a)(ii), and the marketable title shall be subject to this affidavit.

**Illustration 8:** Forty years ago A, by recorded deed, conveyed a certain tract of land to “B and heirs so long as the land is used for residence purposes,” thus creating a determinable fee in B and reserving a possibility of reverter in A. Thirty years ago a deed to the land was recorded from B to C and his heirs “so long as the land is used for residence purposes, this property being subject to a possibility of reverter in A.” At the end of the 40-year period dating from the records of the deed from A to B, C has a marketable record title to a determinable fee, which is subject to A’s possibility of reverter.

**Illustration 9:** Suppose, however, that 43 years ago a deed was recorded conveying a certain tract of land from A, the owner in fee simple absolute, to “B and his heirs so long as the land is used for residential purposes”; and supposes, also, that 40 years ago, a deed was recorded by B to C and his heirs, conveying the same tract of land in fee simple absolute, in which no mention was made of any special limitation or of A’s possibility of reverter. There being no other instruments of record at the expiration of the 40-year period from the date of the recording of the deed from B to C, C has marketable record title in fee simple absolute. His root of title is the deed from B to C and not the deed from A to B; and there are no interests in third parties or defects created by the “muniments of which such chain of record title is formed.”

**Note:** The Wyoming Marketable Title Act is not effective: (a) To bar any lessor or his successor as a reversioner of his right to possession on the expiration of any lease; (b) To bar or extinguish the title to any railroad right-of-way or station grounds or to any easement created or held for any pipeline, highway, railroad or public utility purpose the existence of which is clearly observable by physical evidence of its use; (c) To bar or extinguish any water rights, whether evidenced by decrees, or by certificates or appropriation; (d) To bar or extinguish any title, estate or interest in and to any timber or any minerals (including without limiting the generality of that term, oil, gas and other hydrocarbons) and any

development, mining, production or other rights or easements related thereto or exercisable in connection therewith; or (e) To bar any right, title or interest of the state of Wyoming and of the United States.

#### STANDARD 4.8

**FORTY-YEAR POSSESSION IN LIEU OF FILING NOTICE:** If an owner of a possessory interest in land under a recorded instrument (1) has been in possession of such land for a period of forty years or more after the recording of such instrument, and (2) such owner is still in possession of the land, any marketable record title, based upon an independent chain of title, is subject to the title of such possessory owner, even though such possessory owner has failed to record any notice of his claim in accordance with Wyoming Statute § 34-10-106.

**Authority:** Wyoming Statutes [sic] § 34-10-106.

**Similar Standards:** Model 4.8, Utah 52

**Illustration 1:** A was the last grantee in a chain of title to a tract of land recorded 41 years ago. There is no subsequent instrument of record in the chain of title from A. A has been in possession of this land since receiving title 41 years ago and continues in possession. Forty years ago there is a conveyance from X to Y. There are no other instruments with respect to the chain of title to this land. At present, ignoring any potential inherent defect through fraud in Y's root, both A and Y have a marketable record title. A did not file any notice as provided by Wyoming Statute § 34-10-106. However, Y is not in possession. It should be noted that A was not required to file any notice as provided in Wyoming Statute § 34-10-106 since he had been in possession of the land continuously for a period of 40 years, and his possession is deemed equivalent to the filing of a notice immediately preceding the termination of the 40-year period as described in Wyoming Statute § 34-10-106(a). As a result, Y's marketable record title is still subject to A's interest.

**Illustration 2:** Suppose that you have the same fact situation as set out in Illustration 1 above except for the fact that sometime within the last 30 years A went out of possession of this property and Y is now in possession. However, neither A nor Y has filed any notice as provided in Wyoming Statute § 34-10-106. Y is in possession, but his possessory interest does not extend back for a period of 40 years as required by the statute in order that his possessory interest shall be deemed equivalent to the filing of a notice. However, Y does have a 40-year root title which is subsequent to the title of A, and he should have a marketable record title, free of A's interest.

**Illustration 3:** Suppose that you have the same fact situation as set forth in Illustration 1. That is, A claims to have been in continuous possession for the past 41 years and is now in possession. However, A and Y both claim to be owners

of this property. Y claims to be the owner because he has a 40-year root chain of title which is subsequent to A's chain of title, but A claims that he has been in possession continuously for the past 41 years. Since there is some dispute as to the facts of possession during the last 40 years, it is going to be necessary that a quiet title suit be instituted by either A or Y to determine the respective rights of both parties. The Wyoming Marketable Title Act does not establish a good title by adverse possession if there is some dispute between the parties concerning possession during the last 40 years.

#### STANDARD 4.9

**EFFECT OF ADVERSE POSSESSION:** A marketable record title is subject to any title by adverse possession which accrues at any time subsequent to the effective date of the root of title, but not to any title by adverse possession which accrued prior to the effective date of the root of title if no notice of claim has been filed in accordance with Wyoming Statutes [sic] § 34-10-106.

**Authority:** Wyoming Statute § 34-10-104(a)(iii)

**Similar Standards:** Model 4.9, Kansas 23.8, Utah 53

**Illustration 1:** Suppose that A is the last grantee in a 40-acre tract of land which was recorded over 40 years ago. A enters into a contract to sell this property to B. Upon inspection of the premises, B finds that X is occupying a tract of land approximately one acre in size in the northwest corner of this 40-acre tract, and that there is a house on it and it has been fenced off. Upon further investigation, X claims that he has been in possession of this property for a period exceeding 20 years. Although A has a 40-year marketable record title, it is subject to X's adverse possession, which according to X continued for a period exceeding 20 years. This adverse possession title by X, however, must be perfected by a quiet title suit.

**Illustration 2:** Suppose you have a fact situation as follows: A is the last grantee in a deed to a tract of land which was recorded over 40 years ago. In the same year that the deed to A went on record, X entered into possession and claimed adversely for a period exceeding 10 years, but went out of possession over 40 years ago. Forty years ago, A conveys this property to B and B goes into immediate possession. No other instruments concerning the land appear of record. B now has a marketable record title which extinguished X's title by adverse possession which he acquired over 40 years ago and which he gave up over 40 years ago, prior to the effective date of B's root of title.

**Illustration 3:** Suppose that you have the same fact situation as above, except for the fact that X entered into possession and claimed adversely to all the world for a period exceeding 10 years, but went out of possession sometime within the last 40 years. In this case B has a marketable record title, but it is subject to X's title



which he acquired by adverse possession since X has not been out of possession for at least 40 years. Therefore, a quitclaim deed should be obtained from X and his spouse, if married, or title quieted against him.

#### STANDARD 4.10

**EFFECT OF RECORDING INSTRUMENT OF CONVEYANCE DURING FORTY-YEAR PERIOD:** A marketable record title is subject to an instrument of conveyance recorded subsequent to the effective date of the root of title which shall have the same effect in preserving any interest conveyed as the filing of the notice provided for in Wyoming Statute § 34-10-106.

**Authority:** Wyoming Statute § 34-10-104(a)(iv)

**Similar Standards:** Model 4.10, Utah 54

#### STANDARD 4.11

**INTERESTS EXEMPTED:** Under Wyoming Statutes [sic] § 34-10-104 a marketable record title is subject to certain specified interests which are exempted from operation of the marketable title act. In order for such exemption to apply the interest must have been created, or in the case of a mineral estate it must have been severed from the surface rights, prior to the termination of the 40 year period subsequent to the opponents [sic] root of title.

**Authorities:** Wyoming Statutes § 34-10-104(a)(v) and § 34-10-108

**Illustration 1:** Over 40 years ago A conveyed this land to B; and in this conveyance there is the following reservation: “The grantor A does hereby reserve to himself and his heirs and assigns forever all of the mineral interests which lie under said land.” B now attempts to convey to C, claiming that he has a clear title and that A has not exercised any right to enjoy the mineral rights. The title is good in B, but it is subject to the reservation of the mineral interests in A, and the 40-year chain does not bar the reservation of A.

**Illustration 2:** Suppose A acquired title to certain land 50 years ago under a recorded deed. Forty-five years ago, a stranger to the title conveyed the land by a recorded deed to B. Through recorded instruments, B conveyed to C 40 years ago and C conveyed to D 25 years ago. At the expiration of the 40-year period dating from the recording of the deed to C from B, D will have acquired marketable record title, provided A has filed no notice of claim or been continuously in possession of the land. If A conveys the minerals to X after the expiration of the 40-year period dating from B’s deed, D will continue to hold a marketable record title in both the surface and mineral rights.

**STANDARD 4.12**

**QUITCLAIM DEED OR TESTAMENTARY RESIDUARY CLAUSE IN FORTY-YEAR CHAIN:** A recorded quitclaim deed or residuary clause in a recorded will can be a root of title or a link in a chain of title, for purposes of a forty-year record title under the Wyoming Marketable Title Act.

**Authority:** Wyoming Statute § 34-10-101(v), (vi)

**Similar Standards:** Model 4.10, Utah 55

**STANDARD 4.13**

**FORTY-YEAR ABSTRACT:** The model marketable title act has not eliminated the necessity of furnishing an abstract of title for a period in excess of forty years.

**Authority:** Wyoming Statute § 34-10-108

**Similar Standards:** Model 4.10, Utah 56, Kansas 23.9

**NOTE:** Wyoming Section 34-10-108 names several interests which are not barred by the act, to-wit: rights of reversioners in leases, apparent easements and interests in the nature of easements, water rights, mineral and timber interests and interests of the state of Wyoming and of the United States. These interests must be determined from an examination of the abstract for a period beginning from Government Patent.

**STANDARD 4.14**

**CONFLICTING MARKETABLE RECORD TITLES:** Where two or more “marketable record titles” (as defined in standard 4.2) exist, a conflict may be resolved by the operation of Wyoming Statutes [sic] § 34-10-105. Under said section, the holder of a “marketable record title holds free of interests, claims and charges the existence of which cannot be discovered by an examination of the records covering the period relied upon to make up the “unbroken chain of title of record.”

**Authority:** Wyoming Statutes [sic] § 34-10-105

**Similar Standards:** Michigan 1.7

**Illustration 1:** Suppose A acquired title to certain land 50 years ago under a recorded deed. Forty-five years ago, a deed from a stranger to the title conveying the land in question to B was recorded. Forty-one years ago B conveyed to C. Twenty-five years ago C conveyed to D. Nothing else appears of record affecting the title to the land, which is unoccupied. At present, therefore, A and D each

has a “marketable record title” within the meaning of the Wyoming Marketable Title Act. A’s deed is an instrument recorded more than 40 years in the past which purports to create an interest in him; no deed in D’s chain purports to divest A of his interest; and there is no one in “hostile possession.” A thus has a “marketable record title.” D has an unbroken chain of title of record; there is nothing “purporting to divest” him of such interest, and there is no one in “hostile possession.” Thus D also has a “marketable record title.” D, however, holds free of A’s title. It is to be noted that although no deed “purports to divest” the interest of A, the deed from B to C nevertheless is an instrument which “purports to create” an interest in C and hence in B’s ultimate successor to title, D, and may therefore constitute the basis for the creation of a new “marketable record title” upon the expiration of 40 years from the date of its recording. Under Wyoming Statute § 34-10-105, the respective titles of A and D are held “free and clear of all interests... the existence of which depends upon any...transaction...that occurred prior to the effective date of the root of title.” It seems clear that the Wyoming Marketable Title Act benefits A with respect only to claims which arose prior to 50 years ago, because he must use his recorded deed of 50 years ago to make up his “unbroken chain of title of record.” § 34-10-105 does not benefit A with respect to D’s title which depends on transactions recorded subsequent to the inception of A’s title, and which could be discovered by an examination of the records covering the period upon which A relies. On the other hand, since the inception of D’s 40-year period was 41 years ago with the recording of the deed from B to C constituting the effective date of D’s root of title, D and his successors in interest are entitled to hold the title free and clear of the claim of A, whose title “depends...upon... (a) transaction...that occurred prior to the effective date of the root of title.” The existence of A’s claim cannot be ascertained by an examination of the records covering the period upon which D and his successors would rely to make up “the unbroken chain of title of record.” The stranger’s deed to B cannot serve as D’s root of title because of its inherent fraudulent defect.

**Illustration 2:** Suppose the same facts as in Illustration 1, except that X died intestate 40 years ago, his estate was probated, the land was inventoried therein, and the order assigning the residue of his estate recorded. Neither the heirs of X nor D is entitled to benefit of Wyoming Statute § 34-10-105 as against the other. D is not entitled to the benefit of § 34-10-105 as against the heirs of X, even though it is true that the title of such heirs “depends in part” upon the deed to A 50 years ago, which is a transaction occurring prior to the 40-year period relied upon by D and his successors. The Wyoming Marketable Title Act bans only those claims the existence of which cannot be ascertained by an examination of the records during the 40-year period. Since the deed from A to X, and the record of the probate of X’s estate are matters of record during the 40-year period upon which D relies, the Act does not operate in favor of D as against claims arising therefrom. By the same token, the heirs of X, although they have a “marketable record title” within the meaning of the Act, are not entitled to the benefits of § 34-10-105 as against D, since the transactions on which D depends are of record

within the 40-year period following the inception of the title of the heirs of X. The competing claims must be adjudicated in accordance with other principles, since neither claimant is entitled, as against the other, to benefit of § 34-10-105 of the Act.

**Illustration 3:** Suppose that A is the last grantee in the regular chain of title to a certain tract of land by deed recorded 43 years ago. A deed from a stranger to the title conveying the land in question to X was recorded 42 years ago. Subsequent conveyances from X to Y and from Y to Z were recorded 40 and 30 years ago, respectively. Four years ago, A executed and recorded a notice under oath in conformance with Wyoming Statute [sic] § 34-10-106 and 34-10-107. Nothing else appears of record for the past 43 years affecting the title to the land, which is unoccupied. Neither A nor Z is entitled to the benefit of § 34-10-105 as against the other. Z is not entitled to the benefit of the Act as against A, because § 34-10-106 provides that “a person claiming an interest in land may preserve and keep effective” such interest by the filing for record of such a notice. The existence of A’s claim can be ascertained by an examination of the public records covering the period upon which Z relies to make up his “unbroken chain of record.”

**NOTE:** The Wyoming Marketable Title Act does not affect the operation of applicable statute of limitation [sic] or the doctrine of adverse possession (Wyoming Statute § 1-3-103). It is, therefore, possible that either A or Z may have extinguished the title of the other through open, notorious, continuous and adverse possession of the land in question for the statutory period.

**Illustration 4:** Assume that the same facts as Illustration 3, except that A executed and recorded his notice in conformance with Wyoming Statutes § 34-10-106 and 34-10-107 two years ago. Although A delayed the filing of his notice for more than 40 years from the time he acquired his interest, he acted within 40 years after the deed from X to Y was recorded, which is sufficient under the Act.

**Illustration 5:** Suppose that a certain tract of land was conveyed to A, B, and C, as tenants in common, by deed recorded 48 years ago. A deed from B and C purporting to convey the entire fee simple estate in the land to X was recorded 43 years ago. Subsequent conveyances from X to Y and from Y to Z, of the entire fee simple estate in the land, were recorded 33 and 30 years ago, respectively. Nothing else appears of record for the last 48 years affecting the title to the land, which is unoccupied. Although A has a “marketable record title” to an undivided one-third interest in the land, Z has a “marketable record title” to the entire fee simple estate for the reasons set forth in Illustration 1. Z and his successors in interest are entitled to hold the title free and clear of A’s claim because the latter’s claim “depends...upon...(a) transaction...that occurred prior to the effective date of

the root of title” of Z. The existence of A’s claim cannot be discovered by an examination of the records covering the period upon which Z relies to make up his “unbroken chain of title of record.”

**Illustration 6:** Suppose the chain of title is complete in Frank Jones who died, and his property was assigned over to X and Y in a probate court proceeding. The proceeding is over 40 years old. Suppose that 15 years ago Y conveyed to A the entire interest in this property, and A has conveyed to B, B to C, and C now claims to be the owner of the full title. All of the deeds are absolute conveyances with no restrictions or reservations whatever [sic]. The title is not good in C since his chain is not extended back at least 40 years. We have a situation here in which there is one root of title and two marketable record titles. X has a one-half interest and C has a one-half interest. Suppose, however, in the above illustration that this conveyance from Y to A was over 40 years ago, and it was an absolute conveyance and purported to convey the entire fee with no reservation or restrictions as to the undivided one-half interest in X. This conveyance over 40 years ago from Y to A started a new chain of title with a new root since it was an absolute conveyance with no restrictions or reservations, and A would have a good title since his conveyance extended back over 40 years and the creation of X’s interest antedates C’s root of title.

## CHAPTER V

*(title omitted in original for undisclosed reasons)*

### STANDARD 5.1

**RULE OF IDEM SONANS:** Differently spelled names are presumed to be the same when they sound alike, or when their sounds cannot be distinguished easily, or when common usage by corruption or abbreviation has made their pronunciation identical.

**Similar Standard:** Model 5.1.

### STANDARD 5.2

**USE OR NON-USE OF MIDDLE NAMES OR INITIALS:** The use in one instrument and non-use in another of a middle name or initial ordinarily does not create a question of identity affecting title, unless the examiner is otherwise put on inquiry.

**Similar Standard:** Model 5.2.

### STANDARD 5.3

**ABBREVIATIONS:** All customary and generally accepted abbreviations of first and middle names should be recognized as the equivalent thereof.

**Similar Standard:** Model 5.3.

### STANDARD 5.4

**RECITALS OF IDENTITY:** A recital of identity, contained in a conveyance executed by the person whose identity is recited, may be relied upon unless there is some reason to doubt the truth of the recital.

**Similar Standard:** Model 5.4.

### STANDARD 5.5

**EFFECT OF SUFFIX:** Although identity of name raises the presumption of identity of person, the addition of a suffix as such "Jr." or "II" to the name of a subsequent grantor may rebut the presumption of identity with the prior grantee.

**Similar Standard:** Model 5.5.

### STANDARD 5.6

**VARIANCE BETWEEN SIGNATURE OR BODY OF DEED AND ACKNOWLEDGMENT:** Where the given name or names, or the initials, as used in a grantor's signature on a deed vary from his name as it appears in the body of the deed, but his name as given in the certificate of acknowledgment agrees with either the signature or the body of the deed, the certificate of acknowledgment should be accepted as providing adequate identification.

**Similar Standard:** Model 5.6.

### STANDARD 5.7

**STATEMENT INDICATING IDENTITY OF MARRIED WOMAN:** If, in a conveyance or mortgage by a married woman, there occurs in the body, signature or acknowledgment of such instrument a statement indicating her former name, that statement in sufficient evidence to show identity with her former name as grantee in prior instrument, unless there is some reason to doubt the truth of the statement. Such a statement is implied where a surname is added to her former name.

**Similar Standard:** Model 5.7.

**STANDARD 5.8**

**VARIANCE IN NAME OF WIFE:** If the grantees in one instrument of conveyance are “John Smith and Mrs. John Smith,” and the grantors in a succeeding instrument in the chain of title are “John Smith and Mary Smith,” further evidence should be required to show that Mrs. John Smith is the same person as Mary Smith. The same conclusion should be reached if the grantees were “John Smith and Mary Smith” and the grantors in a succeeding instrument in chain of title were “John Smith and Mrs. John Smith.”

**Similar Standard:** Model 5.8.

**STANDARD 5.9**

**VARIANCE IN INDICATION OF SEX:** If a recorded instrument contains one or more personal pronouns indicating that a person named therein is of a certain sex; a subsequent instrument in the chain of title contains one or more personal pronouns indicating that such person is of the opposite sex, such variance does not make the title unmarketable.

**Similar Standard:** Model 5.9.

**CHAPTER VI****EXECUTION, ACKNOWLEDGEMENT, AND RECORDING****STANDARD 6.1**

**REMEDIAL EFFECT OR CURATIVE LEGISLATION:** The Comprehensive Curative Act, Wyoming Statutes, 1957, Sec. 34-107 through 34-111 is a valid remedial measure, and eliminates objections based upon the imperfections of title which fall within its scope. Action corrective of such imperfections is unnecessary.

**Similar Standard:** Model 6.1, Wyo., 14.

**STANDARD 6.2**

**DATES: OMISSIONS AND INCONSISTENCIES:** Omission of the date of execution from a conveyance or other instrument affecting title does not, in itself, impair marketability. Even if the date of execution is of peculiar significance, an undated instrument will be presumed to have been timely executed if the dates of acknowledgment and recordation, and other circumstances of record, support that presumption.

Inconsistencies in recitals or indications of dates, as between the dates of execution, attestation, acknowledgment, or recordation, do not, in themselves, impair marketability. Absent a peculiar significance of one of the dates, a proper sequence of formalities will be presumed notwithstanding such inconsistencies.

**Similar Standard:** Model 6.2.

### STANDARD 6.3

**DELIVERY; DELAY IN RECORDATION:** Delivery of instruments acknowledged and recorded is presumed in all cases. Specifically, delay in recordation, with or without record evidence of the intervening death of the grantor, does not dispel the presumption. As an added, exceptional protection to his client, an examiner may satisfy himself as to the facts by certain inquiries.

**Similar Standards:** Model 6.3, Wyo., 16.

### STANDARD 6.4

**FEDERAL REVENUE STAMPS:** The absence of federal revenue stamps from an instrument or its record does not impair marketability or necessitate inquiry.

**Similar Standards:** Model 6.4, Wyo. 8.

### STANDARD 6.5

**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. However, marketability dependent upon the effect of the first instrument is not impaired by the second instrument.

**Similar Standard:** Model 6.5.

### STANDARD 6.6

**NONCOMPLIANCE WITH THE STATUTORY ACKNOWLEDGMENT REQUIREMENTS:** Noncompliance with the statutory acknowledgment requirements does not, in itself, impair marketability unless the record discloses evidence of an adverse interest.



**STANDARD 6.7**

**OMISSION OF EXPIRATION DATE:** Omission of date of expiration of term of office of acknowledging officer does not impair marketability of title.

**CHAPTER VII****DESCRIPTIONS**

*(Reserved)*

**CHAPTER VIII****THE USE OF AFFIDAVITS AND RECITALS****STANDARD 8.1**

**IN GENERAL:** (1) Employment of affidavits and factual recitals in conveyances is sound, liberal practice. Adequate affidavits or recitals should be accepted and relied upon in conformity with statutes providing for their use, in accordance with these standards, and in keeping with recognized liberal usage.

(2) Absent extraordinary circumstances, they should not be accepted in lieu of the usual, recognized conveyancing, probate or judicial procedures. They should not be required unless there is a definite need for explanation or supporting evidence.

**STANDARD 8.2**

**WHOSE AFFIDAVITS OR RECITALS ACCEPTABLE:** Affidavits or recitals should be made by persons competent to testify in court, state facts, rather than conclusions, and disclose the basis of the maker's knowledge. The value of an affidavit or recital is not substantially diminished by the fact that the maker is interested in the title or the subject matter of the affidavit or recital.

**STANDARD 8.3**

**CERTIFICATES OF DEATH, BIRTH, OR MARRIAGE PREFERRED:** In general, certified copies of certificates of death, birth, and marriage are preferable to affidavits or recitals to establish the facts of death, birth, and marriage.

## CHAPTER IX

### MARITAL INTERESTS

#### STANDARD 9.1

**RECITAL OF STATUS; NO SHOWING OF MARRIAGE:** Where the record of chain of title does not show that a grantor was ever married, a conveyance by him or her as a single, unmarried, widow or widower is sufficient indication of marital status without inquiry or further evidence.

**Similar Standard:** Model 9.1.

#### STANDARD 9.2

**WIDOW OR WIDOWER:** Designation of a grantor as “a Widow” or “a Widower” is equivalent, insofar as the existence of marital interests in concerned, to the designations “a single woman” or “a single man.”

**Similar Standard:** Model 9.2.

#### STANDARD 9.3

**RECITAL OF STATUS; MARRIAGE SHOWN:** Where the record chain of title shows that a grantor had been married, a conveyance by him or her as a widow or widower, is sufficient as a recital of the death of the spouse and of the fact that the grantor has not remarried.

**Similar Standard:** Model 9.3.

#### STANDARD 9.4

**RELEASE BY JOINDER:** If the spouse of the owner has joined in the execution and acknowledgment of a conveyance in which the statutory release of homestead appears, the fact that the name of the spouse does not appear on the deed, and the fact that no mention is made of the marital interest of the spouse, do not [sic] prevent effective release of the marital interest or require corrective action.

**Similar Standard:** Model 9.4.

#### STANDARD 9.5

**BAR OR PRESUMPTION OF NON-EXISTENCE OF MARITAL INTERESTS:** Marketability of title is not impaired by the possibility of an outstanding marital interest in the spouse of any former owner whose title has passed by

instruments of record for not less than ten (10) years unless such marital interest has been established or asserted by proceedings or other matters of record. Inquiry or corrective action is unnecessary.

**Similar Standard:** Model 9.7.

## CHAPTER X

### CO-TENANCIES

#### STANDARD 10.1

**CONVEYANCES BY CO-TENANTS:** While title is in two or more persons, including spouses, in any form of co-tenancy, an otherwise effective conveyance by them without reference to the tenancy is sufficient. An erroneous reference to the type of tenancy, or an indication of a mistaken impression as to the type of tenancy is unobjectionable. After all co-tenants have effectively conveyed, all questions as to the type of tenancy which existed are moot, and any indication of a mistaken impression by the co-tenants or their grantor as to the type of tenancy which existed is unobjectionable.

**Similar Standard:** Model 10.1.

#### STANDARD 10.2

**ONE GRANTEE:** A conveyance to a single grantee, although purporting to convey to joint tenants or being a joint tenancy form of deed, should be treated as a conveyance to the named grantee only and requires no corrective action.

**Similar Standard:** Model 10.2.

#### STANDARD 10.3

**IDENTIFICATION AND MARITAL RELATIONSHIP OF PLURAL GRANTEES:** The failure to identify or state the marital relationship of plural grantees in a conveyance does not impair marketability if such identity or relationship is otherwise established by or can be readily inferred from, other recorded instruments, acknowledgments or affidavits.

**Similar Standard:** Model 10.3.

## CHAPTER XI

### CONVEYANCES BY AND TO TRUSTEES

#### STANDARD 11.1

**EFFECT OF DESIGNATION “TRUSTEE”:** When the word “trustee” follows the name of a party to an instrument, and neither this instrument nor any other recorded instrument in the chain of title sets forth a definition of the trust or the powers of such person, a title from such person can be approved without any investigation of the powers of such person to convey.

**Similar Standard:** Model 11.1.

## CHAPTER XII

### CORPORATE CONVEYANCES

#### STANDARD 12.1

**NAME VARIANCES:** Corporations are satisfactorily identified although their exact names are not used and variations exist from instrument to instrument if, from the names used and other circumstances of record, identity of the corporation can be inferred with reasonable certainty. Among other variances, addition or omission of the word “the” preceding the name; use or non-use of the symbol “&” for the word “and”; use or non-use of abbreviations for “company”, “limited,” “corporation” or “incorporated”; affidavits and recitals of identity may be used and relief [sic] upon to obviate variances too substantial or too significant to be ignored. Where a place or location preceded by “of” or “in” is a part of the title of a corporation and a variance relative thereto appears in the record, it is proper to require the execution of another instrument or an appropriate showing of identity.

**Similar Standard:** Model 12.1, Wyo., 3.

#### STANDARD 12.2

**NAME OMITTED FROM SIGNATURE:** The signature to a corporate instrument is sufficient notwithstanding the omission of the corporate name over the signature of the signers, if the corporation appears in the body of the instrument as the party to the instrument, the person signing the instrument is identified as an officer of the corporation, and the instrument is otherwise properly executed and acknowledged.

**Similar Standard:** Model 12.2, Wyo., 12.

**STANDARD 12.3**

**AUTHORITY OF PARTICULAR OFFICERS EXECUTING INSTRUMENTS:** Where an instrument of a private corporation appears in the title, and the instrument is executed, acknowledged and sealed in proper form, the examiner may assume 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.

**Similar Standard:** Model 12.3.

**STANDARD 12.4**

**CORPORATE EXISTENCE:** Where an instrument of a private corporation appears in the title, and the instrument is executed in proper form, the examiner may assume that the corporation was legally in existence at the time the instrument took effect.

**Similar Standard:** Model 12.4.

**STANDARD 12.5**

**ULTRA VIRES:** Where an instrument of a private corporation appears in the title, an examiner may assume that the corporation was authorized or not forbidden to acquire and sell the real property affected by the instrument.

**Similar Standard:** Model 12.5.

**STANDARD 12.6**

**FOREIGN CORPORATIONS:** Where an instrument of a corporation organized and doing business under the laws of another state appears in the title, an examiner need not inquire whether such corporation was authorized to do business in this state or to acquire and dispose of the real property affected by the instrument.

**Similar Standard:** Model 12.6

**CHAPTER XIII****CONVEYANCES INVOLVING PARTNERSHIPS AND  
UNINCORPORATED ASSOCIATIONS****STANDARD 13.1**

**CONVEYANCE OF REAL PROPERTY HELD IN PARTNERSHIP NAME:** Real property acquired by a partnership and held in the partnership name may be

conveyed only in the partnership name. Any conveyance from the partnership so made, and signed by one or more members of the partnership, which conveyance appears to be executed in the usual course of partnership business, shall be presumed to be authorized by the partnership in the absence of knowledge of facts indicating a lack of authority; and the recitals in the instrument of conveyance shall be accepted as sufficient evidence of such authority.

**Similar Standard:** Model 13.1.

### STANDARD 13.2

**AUTHORITY OF ONE PARTNER TO ACT FOR ALL:** When real property is held by a partnership, and a conveyance is made on behalf of the partnership by one or more, but less than all, of the partners, and the conveyance appears to be executed in the usual course of partnership business, it is presumed, in the absence of evidence to the contrary, that the conveyance was made by the partner or partners executing it for the purpose of carrying on in the usual way the business of the partnership; and no further evidence of authority of such partner or partners to execute the instrument should be required by the title examiner.

### STANDARD 13.3

**NO MARITAL RIGHTS IN PARTNERSHIP REAL PROPERTY:** No homestead rights attach to the interest of a married partner in specific partnership real property. If by recitals in instruments in the chain of title, or otherwise, it appears that partnership real property was conveyed, the title examiner should not require any evidence of release or non-existence of such marital rights.

**Similar Standard:** Model 13.3.

### STANDARD 13.4

**CONVEYANCE OF PARTNERSHIP REAL PROPERTY AFTER DEATH OF A PARTNER:** After the death of a partner, real property owned by the partnership may be conveyed by the surviving partner or partners. After the death of the last surviving partner, the partnership property may be conveyed by his legal representative. The title examiner should make the same requirements for a showing of the record of the decease of a tenant in partnership, or of the devolution of title to the estate of the last surviving tenant in partnership, as is made on the death of a joint tenant or the last surviving joint tenant.

**Similar Standard:** Model 13.4.

**STANDARD 13.5**

**CONVEYANCE TO UNINCORPORATED ASSOCIATION:** A conveyance to an unincorporated association does not operate to vest title in such association.

**Similar Standard:** Model 13.5.

**STANDARD 13.6**

**CONVEYANCE OF REAL PROPERTY TO UNINCORPORATED ASSOCIATION:** Where, according to the terms of a recorded conveyance, real property has been acquired in the name of an unincorporated association, other than a partnership, which does not include any of the names of the members of the unincorporated association, the grantor in such conveyance, or his heirs or devisees, should execute a new conveyance to the individual members of the unincorporated association as tenants in common “doing business under the firm name of \_\_\_\_\_ (stating the unincorporated association name).” Thereupon a conveyance from the unincorporated association should be approved if it is executed by all such members and the instrument states that they are all members of the unincorporated association.

**CHAPTER XIV****TITLE THROUGH DECEDENTS’ ESTATES****STANDARD 14.1**

**FINALITY OF DECREE OF DISTRIBUTION:** A decree of distribution contrary to the terms of an admitted will or statutes of descent does not make a title based upon such decree unmarketable if the decree has not been appealed from and the time for appeal has expired.

**Similar Standard:** Model 14.1.

**STANDARD 14.2**

**JUDGMENTS AGAINST HEIRS:** Where a will directs the executor to sell real estate and such sale is made, judgments against the heirs do not constitute a lien on the land so sold, and the abstract need not disclose a search therefor.

**Similar Standard:** Model 14.2.

**CHAPTER XV****JUDGMENTS****STANDARD 15.1**

**NO EXECUTION ON JUDGMENT AFTER 5 YEARS:** A money judgment upon which no execution has been issued for 5 years shall not be treated as a lien or defect of title.

**STANDARD 15.2**

**NECESSITY FOR COMPLETE JUDICIAL PROCEEDINGS:** A decree, judgment or order entered by a Wyoming court outside the county in which the land is situated will be presumed to be valid without examination of the preceding court record if jurisdictional facts are recited therein and the same has been of record for three months.

**CHAPTER XVI****MORTGAGES AND MORTGAGE FORECLOSURES****STANDARD 16.1**

**MORTGAGE RECORDED PRIOR TO DEED:** The validity of a mortgage is not impaired by the fact that it is recorded prior to the recording of the instrument by which ownership is acquired, except to the extent that rights of third parties may have intervened.

**Similar Standard:** Model 16.1.

**STANDARD 16.2**

**AFTER-ACQUIRED TITLE:** A mortgage containing words of warranty given by a person then having no title, but subsequently acquiring it, is valid except to the extent that rights of third parties are involved.

**Similar Standard:** Model 16.2.

**STANDARD 16.3**

**DEED FROM MORTGAGOR TO MORTGAGEE:** (1) Marketability is not impaired by the fact that title is derived through a conveyance from an owner to the holder of a mortgage. In the absence of an affirmative indication of record



that the conveyance was given as additional security, or that the mortgagor has or claims grounds for setting aside the conveyance, inquiry is unnecessary, whether title is held by the mortgagee or by a grantee from him.

(2) Marketability is not impaired by an undischarged mortgage where a warranty deed has been made by a person who was both record holder of the mortgage and record title holder. Inquiry, or discharge of the mortgage, is unnecessary unless the record affirmatively discloses an intention that the mortgage continue in effect.

**Similar Standard:** Model 16.3.

#### STANDARD 16.4

**IRREGULARITIES AND DISCREPANCIES IN DISCHARGES:** A discharge of a mortgage is sufficient notwithstanding errors in dates, amounts, book and page of record, property descriptions, names and position of parties, and other information, if, considering all circumstances of record, sufficient data are given to identify with reasonable certainty the security interest sought to be discharged. A quitclaim deed is sufficient as a discharge if, from circumstances of record, it can be inferred with reasonable certainty that discharge was intended.

**Similar Standard:** Model 16.4, Wyo., 7.

#### STANDARD 16.5

**TITLE THROUGH FORECLOSURE; FAILURE TO RELEASE:** Marketability of a title derived through foreclosure of a mortgage is not impaired by failure to release of record the instrument which created the interest foreclosed, or any instrument which created a junior lien or interest which was extinguished by the foreclosure.

**Similar Standards:** Model 16.5, Wyo., 19.

#### STANDARD 16.6

**RELEASE OF ASSIGNMENT OF RENTS:** Failure to release an assignment of rents does not impair marketability if, from the record, it can be determined or inferred with reasonable certainty that any release of the encumbrance shall operate as a release of the assignment or that the assignment was given as additional security for an obligation secured by a mortgage which has been discharged or record.

**Similar Standards:** Model 16.6, Wyo., 10.

**STANDARD 16.7**

**RELEASES; CORRECTION OR RE-RECORDED MORTGAGE:** Where a mortgage is followed by another which can be determined from the record to have been given to correct or modify the former, or to be a re-recording of the former, or to secure the same obligation, marketability is not impaired by a failure to discharge one of the mortgages if the other is discharged of record.

**Similar Standards:** Model 16.7, Wyo., 6.

**STANDARD 16.8**

**RELEASE OF LIEN BY ONE JOINT OBLIGEE:** A release of any lien given by any one of two or more joint obligees shall be sufficient release of the lien.

**STANDARD 16.9**

**ENCUMBRANCES UPON DOMINANT INTERESTS:** In cases of a sale or mortgage of an interest subject to another interest, as, for example, a fee simple title subject to an easement, encumbrances upon and problems connected with the dominant or superior interest are immaterial to the interest being transferred and to its title. Abstract entries, and references in title opinions or certificates, pertinent to such encumbrances and problems are unnecessary and immaterial.

**Similar Standard:** Model 16.9.

**CHAPTER XVII****MECHANICS' LIENS****STANDARD 17.1**

**NO RELEASE OF LIEN NECESSARY:** A materialmen's, mechanics' miners' or oilwell drillers' lien may be disregarded after lapse of the time within which suit for foreclosure may be filed, unless proceedings for its foreclosure have previously been commenced; and no release shall be required by the title examiner.

**Similar Standard:** Model 17.1.

**STANDARD 17.2**

**RECITALS OF OWNERSHIP:** The statement of ownership in a mechanics' lien statement shall be disregarded by a title examiner.

**Similar Standard:** Model 17.2.

**CHAPTER XVIII****TAX TITLES**

*(Reserved)*

**CHAPTER XIX****BANKRUPTCY**

*(Reserved)*

**CHAPTER XX****FEDERAL TAX LIENS****STANDARD 20.1**

**FEDERAL TAX LIENS:** It is not necessary to maintain in the opinion the possibility of claims under federal laws which do not show upon local records.

**CHAPTER XXI****SOLDIERS' AND SAILORS' CIVIL RELIEF ACT****STANDARD 21.1**

**JUDICIAL PROCEEDING PRESUMED TO COMPLY WITH ACT:** The Soldiers' and Sailors' Civil Relief Act of 1940 and amendments thereto, are solely for the benefit of those in military service, and, if the court has presumed to take jurisdiction and there is nothing in the record that would affirmatively indicate that any party affected by the court proceedings was in military service, the form of the affidavit as to military service or its entire absence from the record does not justify the rejection of the title.

**Similar Standard:** Model 21.1.

**CHAPTER XXII****MISCELLANEOUS****STANDARD 22.1**

**NON-JURISDICTIONAL DEFECTS IN COURT PROCEEDINGS:** Defects or irregularities in court proceedings not involving jurisdiction should

be disregarded. Among such matters may be mentioned misjoinder or parties or actions and existence of other than jurisdictional grounds [sic].

**Similar Standard:** Model 22.1, Wyo., 5.

#### STANDARD 22.2

**FAILURE TO RELEASE NOTICE OF LIS PENDENS:** An unreleased notice of the pendency of the proceedings does not impair marketability after the noticed proceedings have terminated.

**Similar Standard:** Model 22.2.

#### STANDARD 22.3

**QUITCLAIM DEEDS:** The fact that a conveyance necessary to the chain of title, including the conveyance to the proposed grantor, is a quitclaim deed does not impair marketability or necessitate inquiry or corrective action.

**Similar Standard:** Model 22.3.