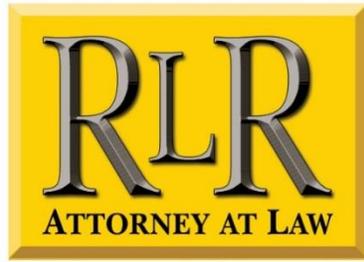


Torrens Basics



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RAMSEY
COUNTY



MELCHERT • HUBERT • SJODIN



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Question:

If a satisfaction comes in with the language from the “holder, owner, assignee, or successor of the mortgagee’s interest in the mortgage” statute, but the drafter includes an FKA for the signer without detailing how the name changed, do you require a refile of a document to show how the name changed?

Would the last holder of record on the certificate make a difference?

Answer:

The important piece is a party signing saying it is the holder/owner.

Former names don't matter in my opinion because they don't impact the fact that the current entity is alleging it is the holder/owner.

Related: if a satisfaction includes the holder/owner language but is executed by X as AIF for the holder/owner, then the POA is required.

Question:

COT is in the name of First Northwestern National Bank of Random City. Through a series of name changes and mergers, this is now Wells Fargo. The title company has submitted a Secretary's Certificate attaching copies (not certified) of all of the various name changes which establish that FNNBRC is now WF. Presumably this is so they don't have to obtain certified copies of each document and pay to record each document separately, which is our normal policy. Should we accept this Secretary's Certificate to establish the name change?

Kimberly

Answer:

Pros of accepting:

- “links in the chain” are all there (name changes establish chain from FNNBRC to WF).

Cons of accepting:

- attached documents are not certified
- cannot be indexed by each financial institution’s name (so not searchable by grantor/grantee)
- less recording fees

Related Question:

When a mortgagee is Bank A and a satisfaction comes in from Bank B and no assignment is of record, what is required to properly demonstrate that Bank A's name has changed to Bank B?

Answer:

Depends on whether 507.411 (successor by merger) or 507.403 (holder/owner) statutes apply.

Examiner approach varies; some accept an f/k/a reference (e.g. Bank B, f/k/a Bank A), some want an “Affidavit of Identity” to explain the variance, and some want certified copies of the name change/merger documents.

An Affidavit with attached documentary evidence or certified copies would be preferable.

Question:

There is a mortgage foreclosure sale by senior mortgage holder with two subordinate mortgages to different mortgagees. No other liens. Buyer at foreclosure sale obtains and files a quit claim deed from the mortgagors and spouses, if any, as well as satisfactions and/or releases of the junior mortgages and deeds the property to a third party. Is a proceeding subsequent required under Minn. Stat. § 508.58 to issue a new Certificate of Title?

Answer:

No. Clear title has now vested in new owner through deeds and satisfactions/releases, and new owner has not acquired title through foreclosure action so proceeding subsequent is unnecessary.

Question:

Warranty Deed conveys property to third party. Husband and wife as joint tenants are the owners on the Certificate of Title. There is no death certificate filed on the Certificate, but the Warranty Deed acknowledges wife's status as a widow. Is the inclusion of "widow" sufficient to transfer the property?

Answer:

No. While Title Standard #10 states “Where the record shows that a grantor was married and the conveyance out recites that he or she is a widower or widow, that recital will be taken as sufficient proof of death of the spouse and that the grantor has not remarried,” Minn. Stat. Section 508.71 Subd. 5 specifically states “In case of a certificate of title outstanding to two or more owners as joint tenants, upon the filing for registration of a record of death of one of the joint tenants and an affidavit of survivorship, the registrar without the order or directive shall issue a new certificate of title for the premises to the survivor in severalty or to the survivors in joint tenancy as the case may be.”

QUESTION:

When are minor variances in legal description or names acceptable?

Lot 10 versus Lot Ten; John Smith A/K/A
John T. Smith versus John Smith aka
John T. Smith.

ANSWER:

When the intention of the document is clear. Torrens documents must be accurate, not perfect.

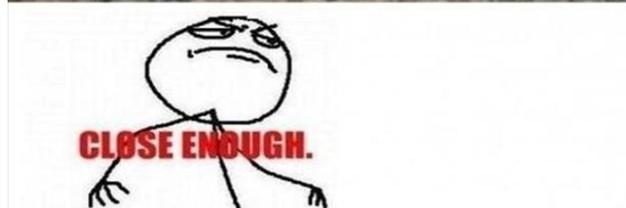
Question:

With a deed, we always make sure the sellers' names are exactly as shown on the COT (with middle initial, without, full middle name, etc.) Since a TODD is like a transfer document, should the same rule apply?

Answer:

The TODD grantor name should be reasonably close to the Fee Owner name.

TODDs must be filed before the grantor dies, to be valid. In case it is a deathbed situation, err on the side of filing the TODD. The TODD can be revoked or replaced by a subsequent TODD, if necessary to fix a name problem. Additionally, there is no requirement in Chapter 508 that a Deed grantor's name must be an exact match to the FO.



Susan

Question:

TODD affecting only Torrens property was erroneously recorded in the same county's abstract records.
Grantor-owner dies.

1. Can the TODD subsequently be memorialized on the COT after Grantor-owner's death?
2. Is the TODD still valid?

Answer:

1. Be careful rejecting TODDs for recording.
2. Validity is questionable/arguable in this situation.

Moral of the story: if the TODD is not registered on the specific COT prior to the grantor-owner's death, seek Examiner input.

The statute (507.071) defines "recorded" in way that can result in various interpretations of validity.

Question:

Local attorney calls Registrar of Titles questioning the validity of documents to be recorded conveying property by an Attorney-in-Fact (AIF). Attorney states the documents should not be recorded and the conveyance is not a legal sale because 2 individuals, both of whom are designated as “Principals” signed one Power Of Attorney (POA), and the AIF indicated on the POA is a realtor.

Answer:

The legality or effectiveness of a POA is not impacted by having two principals sign the same document as it does not appear to be prohibited by statute. The con of accepting this POA would be the inability to collect the additional recording fee, but do not know of a valid reason for rejection.

QUESTION:

Who must execute a POA from a Limited Partnership to an attorney-in-fact?

ANSWER:

The general partner.

Question:

Owner and Mortgagee of Lot 1 sign a Declaration of Easement creating an ingress/egress easement over the south 10 feet of Lot 1 for the benefit of Lot 1 only.

Should the Registrar accept it?

Answer:

Yes. Take the Declaration of Easement and put it on all Certificates of Title for Lot 1, if Lot 1 is later sold off in parts. The common law doctrine of merger is modified by Minn. Stat. 507.47:

507.47 CREATION OF SERVITUDES BY COMMON OWNER.

An **easement**, condition, restriction, or other servitude that is imposed on real property by a recorded instrument and is not in violation of law or public policy, **is valid notwithstanding the common ownership**, when the easement, condition, restriction, or other servitude is imposed, of any of the real property burdened or benefited by the easement, condition, restriction, or other servitude. A conveyance of all or any portion of the real property includes the benefits and burdens of all easements, conditions, restrictions, or other servitudes validated under this section, except as provided by sections [500.20](#) and [541.023](#). **The common law doctrine of merger, and not this section, applies whenever, after ownership of any of the real property is severed, all of the real property burdened or benefited by an easement, condition, restriction, or other servitude again is owned by a common owner.**

History:

[2001 c 50 s 1](#)

Question:

A is the registered owner. Two deeds are submitted for recording in same package. By a July 10, 2018, QCD, B conveys the land to C. The second deed is a warranty deed, with proper POA (this is why the Examiner has it) dated August 10, 2018, for land from A to B. QCD is returned by Examiner stating that a QCD does not convey after acquired title per Minn. Stat. § 507.07. QCD returned a week later with date of instrument crossed off and Sept 10, 2018 hand written in for date of deed. Should you accept the QCD?

Answer:

I would refer to Examiner pursuant to Minn. Stat. § 508.13 and if I were Examiner, I would require Affidavit of grantor on QCD that deed was intended to convey after-acquired title or that grantor ratified it subsequent to date of warranty deed. Examiner should attach Affidavit to Directive and Directive should be memorialized.

Question:

Can you require a document to be recorded if another document submitted for recording makes reference to it (e.g. an amendment to a lease is submitted but the underlying lease is not recorded)

Answer:

508.51 says that a when voluntary instrument made by a registered owner is presented for recording the registrar shall enter a new COT or make a memorial and it is binding on the registered owner and all persons claiming under the registered owner

- Stat. previously required presentation of the owner's duplicate, which authorized the registrar to memorialize or issue a new COT
- When Stat. was amended to remove requirement of owner's duplication, permissive language ("authorized to") turned in required ("shall")
- I question intent of statutory revision

QUESTION:

How should the “running in favor of” text be completed for a Transfer on Death Deed with both direct and contingent beneficiaries?

Denise Coleman, or if she predeceases me, to her children, Mary Coleman and Zane Coleman; AND Carl North, or if he predeceases me, to his child, Cooper North.

ANSWER:

Designates Beneficiaries, see document.

Question:

Alf executes a warranty deed and Affidavit of Alf, placing deed in escrow with the title company pending the funding of the sale. Principal of the POA passed away the day after the deed and affidavit were executed and delivered to title. Should the deed and affidavit be accepted for recording?

Answer:

Yes. An Examiner would likely not know about the death of the principal, and if the AIF executed the deed and affidavit on the same day, the statements contained in the Affidavit would be correct. Another angle, per Minn. Stat. Section 508.47 Subd. 1, a deed for registered property doesn't transfer title until it is recorded (508.47 Subd.1); prior to recording it is only a contract between the parties. Title to the property would vest in the heirs/devisees upon death of the principal, but would still be subject to the contract formed by the deed signed by the AIF. Ultimately heirs/devisees could challenge the validity of the deed during the administration of decedent's estate.

Question:

Is an electronic certification of a document acceptable?

20170944084
OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
ADRIAN FONTES



The foregoing instrument is an
electronically prepared
full, true and correct copy
of the original record in this
office.
Attest: 03/29/2018 06:32:40 AM

By  Recorder

To Verify this purchase visit
<http://recorder.maricopa.gov/recdocdata/verifycert.aspx?id=196246>

Susan

Answer:

Yes, if electronic certification is authorized by law of the state of the keeper of the record.

507.24 Subd. 1 If ...the other instrument affecting real estate is executed out of state, it shall be entitled to record if executed as above provided or according to the laws of the place of execution so as to be entitled to record in such place.

Unless it looks suspicious, it's probably not necessary to research the authority.



ADRIAN FONTES
MARICOPA COUNTY RECORDER

Verify Certified Document

Enter id number:

Certification Date/Time: 3/29/2018 6:32:40 AM

RECORDING NUMBER(S) REQUESTED:

20170944084

Question:

Certificate of Title has two owners, Carol and Walter. Carol, single, signs one deed to grantee while Walter, married, signs a deed to grantee and Susan, married to Walter, signs another deed to grantee. Should deeds be recorded and new Certificate of Title be issued to the grantee?

Answer:

Deed from Carol conveys her undivided interest in property to grantee and should be memorialized and grantee may request a Certificate of Title for undivided interest acquired from Carol pursuant to Minn. Stat. § 508.421, Subd. 2. Since no way to know if homestead property or not, separate deeds from Walter and his spouse not sufficient to transfer Walter's interest to grantee. Minn. Stat. § 507.02. Would memorialize Walter's and spouse's deeds, however.

Question:

ROW Plat and deed to the County for Parcel 19 of ROW Plat #35 was memorialized on the Certificate of Title. Does it take an Examiner's Directive to change the face of the Certificate to except out this conveyance or can we make a new cert and do that ourselves like we would with a normal sale?

Answer:

Minn. Stat. Section 505.1793 Subd. 5 and Minn. Stat. Section 160.085 Subd. 3(b) both state that land acquisition by the governing body for public transportation by instrument of conveyance may refer to the map or plat and parcel number, together with delineation of the parcel, as the only manner of description necessary for the acquisition.”

I would treat the conveyance like a “normal” sale of a portion of the property. Memorialize the ROW Plat (with the legal description identified by parcel number) and the deed on the Certificate. Cancel the existing Certificate and issue a new Certificate to the grantee of the right of way parcel, and a residue Certificate to the grantor for the portion of land not conveyed.

QUESTION:

Is a conveyance to two people as “tenants by the entirety” acceptable?

ANSWER:

Yes, it results in tenancy in common.

Question:

Probate disclaimer is requested to be memorialized stating that a beneficiary under the trust disclaims $\frac{1}{2}$ of the real property. It also states: “No part of this instrument is to be construed as a Renunciation and Disclaimer of my right to receive the other $\frac{1}{2}$ of that share to be distributed to me upon decedent’s death pursuant to the trust.” Should this be entered on Certificate? What if already on Certificate and Trustee’s deed, with proper Affidavit of Trust and Certificate of Trust, is then submitted for recording which conveys all land owned by the trust to others. What do you do?

Answer:

Require Disclaimer be made part of Claim of Unregistered Interest pursuant to Minn. Stat. § 508.70.

Court order or certification of Examiner required pursuant to Minn. Stat. § 508.62; if Disclaimer already memorialized, would direct issuance of new Certificate of Title to grantee named in Trustee's deed, ignoring disclaimer on basis of Minn. Stat. § 508.48: "Neither the reference in a registered instrument to an unregistered instrument or interest nor the joinder in a registered instrument by a party or parties with no registered interest shall constitute notice, either actual or constructive, of an unregistered interest."