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## Additional Real Estate Standards

Dicta Editorial Board

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## Additional Real Estate Standards

## ADDITIONAL REAL ESTATE STANDARDS

The following Real Estate Title Standards were adopted by the members of the Colorado Bar Association in convention assembled on October 24, 1953:

### STANDARD NO. 77

**FORECLOSURE—Proceeding Under Rule 120 Brought in the County Court**

*Problem:* The proceeding under Rule 120 of the Colorado Rules of Civil Procedure to secure order authorizing foreclosure sale by the Public Trustee was brought to the County Court. Is the principle laid down in *Wyman v. Felker*, 18 Colo. 382, 384—386, and in *Reichelt v. Town of Julesburg*, 90 Colo. 258, 266—267, and in the decisions therein cited to be applied to make the title derived through the foreclosure proceedings merchantable, even though both the value of the property and the amount unpaid on the indebtedness were in excess of \$2,000.00?

*Answer:* Yes.

### STANDARD NO. 78

**FORECLOSURE: Time of Commencement of Proceeding Under Rule 120**

*Problem:* Is a title derived through foreclosure sale by the Public Trustee rendered unmerchantable by: (1) the fact that the proceedings in the office of the Public Trustee for the foreclosure by the Public Trustee were commenced before the proceeding under Rule 120 was commenced; (2) the fact that the proceeding under Rule 120 was commenced before the proceedings in the office of the Public Trustee for the foreclosure by the Public Trustee were commenced?

*Answer:* No, in each of the situations, so long as the order authorizing the sale was entered in the proceeding under Rule 120 before the sale was made by the Public Trustee.

### STANDARD NO. 79

**DEED BY CORPORATION TO CORPORATE OFFICERS**

*Problem:* Chain of title contains a properly acknowledged deed with the corporate seal affixed from a corporation to one or both of the corporate officers who executed the deed. Is the title so derived marketable without a supporting resolution of the Board of Directors?

*Answer:* Yes.

## STANDARD NO. 80

## DESCRIPTION OF THE PERSON AS TO GRANTEE

*Problem:* A conveyance describes the grantee as trustee, agent, conservator, executor, administrator, attorney in fact or some other representative capacity but does not name the beneficiary or beneficiaries so represented and define the trust or other agreement under which the grantee is acting or refer to an instrument, order, decree or other writing of public record in the county in which the land conveyed is located in which such matters appear. Is merchantable title conveyed by: (1) a subsequent conveyance executed by such grantee without word or words indicating such representative capacity following his name; (2) a subsequent conveyance executed by such grantee with word or words indicating such representative capacity following his name?

*Answer:* Yes in each case.

## STANDARD NO. 81

## DESCRIPTION OF THE PERSON AS TO GRANTOR

*Problem:* A conveyance contains no language which describes the grantee as trustee, agent, conservator, executor, administrator, attorney in fact or some other representative capacity; the abstract does not show any instrument (other than the subsequent conveyance hereinafter mentioned) which indicates that such grantee was acting in any of such representative capacities. Is merchantable title conveyed by a subsequent conveyance executed by such grantee with word or words indicating one of such representative capacities following his name but without identifying the trust, principal, ward, estate or beneficiary or beneficiaries represented by him?

*Answer:* Yes.

## STANDARD NO. 82

## HOMESTEAD—Identity of Surname—Separate Conveyance

*Problem:* If the owner of homesteaded property and a person of the opposite sex, both bearing the same surname, execute separate conveyances or encumbrances thereof, is the identity of surnames prima facie evidence that such parties are husband and wife, so that the homesteaded property has been properly conveyed or encumbered?

*Answer:* Yes.

## STANDARD NO. 83

## HOMESTEAD—Conveyance—One Spouse to the Other

*Problem:* Does conveyance from one spouse to the other, or to a person of the opposite sex bearing the same surname, operate to destroy or surrender a homestead?

*Answer:* No.

## COMMENT ON STANDARD NO. 83

Even though Chapter 156, Session Laws 1953, liberalized the requirements in conveying real estate subject to a homestead, certain formalities remain necessary in conveyances between spouses.

The typical problem arises when a separation between husband and wife is imminent. Title to the house is usually in joint tenancy. A homestead has been filed either by the husband or wife. The husband proposes to convey his interest to the wife. Often the wife's attorney accepts a quit claim deed from the husband. The wife then owns the entire interest in the property.

The Standard states that the homestead is still valid. This fact can cause difficulty in two respects:

- (1) If a divorce is not granted, any future loan or sale requires signature by the husband.
- (2) Even though a divorce is granted, the wife cannot obtain a loan or make a sale of the property without her husband's signature until the *final* decree is entered.

This situation arises so often the committee wished to emphasize the problem.

A suggested solution is for both to deed to a third person, or straw man, with a recital they are husband and wife. Reconveyance by the third person to the wife will then free the property from the homestead. As an alternative, under the 1953 Statute both husband and wife can sign an instrument in writing releasing the homestead. The second alternative might raise a question, however, in the event the wife, after the divorce was final, desired to homestead the property for her own benefit, and for the benefit of minor children.

## STANDARD NO. 84

**HOMESTEAD—Death or Divorce of or from Husband**

*Problem:* After a homestead entry has been filed, the record shows evidence of the death of, or divorce from, the husband, and the wife, the record owner, subsequently conveys without recitation as to marital status, there being no showing of a change in said wife's name. Is the title merchantable?

*Answer:* Yes.

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**BAR FOUNDATION IS ORGANIZED**

Creation of the Colorado Bar Foundation, Incorporated, has long been needed and awaited. Your attention is called to the first two articles appearing in this issue of *Dicta*. Members of the bar are urged to name the Foundation in their will and to recommend the Foundation to clients. Members of the Colorado Bar Association will soon receive a subscription blank to be used in making a pledge to the Foundation.

## AMENDMENT TO SUPREME COURT RULE

It is this day ordered that Rule 204 of the Rules of Civil Procedure (Rules Governing Admission to the Bar) be, and is hereby is, amended by striking therefrom the following, to-wit:

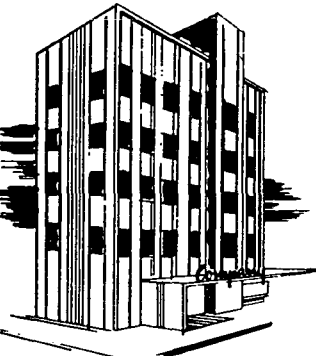
That if admitted it is his intention to begin the practice of law within this state, or the teaching of law in an approved law school in Colorado, within three months from the date of his admission and to make the same his permanent and usual occupation.

And by substituting a period for the semi-colon after the word "crime" in said rule.

Adopted October 15, 1953.


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*Remember the COLORADO BAR FOUNDATION, INC., in Your Will*




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