

June 2021

## Effect of Annexation of Land of One County by Another on Existing Deeds of Trust

Mandell Levy

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

---

### Recommended Citation

Mandell Levy, Effect of Annexation of Land of One County by Another on Existing Deeds of Trust, 25 *Dicta* 183 (1948).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

redundancies that the state statutes need. As a matter of fact, very likely city ordinances need an even more thorough going over than do the state statutes. We believe that we left out of our list of 1946 objectives one very important one. It would read something like this: "We will suggest to the legislature and seek the adoption of a state administrative procedure act which will unify administrative procedure and secure to the citizens of the state all legal rights from administrative agencies that we now have from legislative bodies and the courts." Too long have we failed to recognize the necessity of providing for proper procedure of our state administrative agencies. With these amendments and additions, as our last educational act in suggesting a program for the organized bar we reiterate the above suggestions.

After the original publication of the above list, we received some very interesting comments from lawyers regarding the suggested objectives. One lawyer suggests that all attorneys send copies of any title opinions to the office of the secretary of the bar association, so that these will be available for attorneys wishing to examine them. The purpose of this suggestion is to enable attorneys to make a more satisfactory examination with a smaller consumption of time thereby increasing the earning capacity of lawyers doing this kind of work. Another attorney has reviewed the suggestions item by item making comments and recommendations but generally favoring all of the proposed objectives. To those who have in the past supported the program, as laid out above, of increasing professional skill, professional earnings and general self-interest and rendering greater community service and leadership, and to those who will support these objectives in the future, go our thanks and, we hope, the thanks and honor of the entire bar.

## **Effect of Annexation of Land of One County by Another on Existing Deeds of Trust**

By MANDELL LEVY  
*Of the Denver bar*

A great deal of confusion and duplication has arisen concerning the release of deeds of trust executed to the public trustee of Arapahoe County on land and improvements formerly in Arapahoe County, but since annexed to the City and County of Denver, said deeds of trust having been properly executed when the land and improvements were in the County of Arapahoe.

The problem is presented as to which public trustee, either that of Arapahoe County or the City and County of Denver, is the proper official to execute a release in such event.

Since the office, functions and duties of public trustees are entirely statu-

tory, all matters and things pertaining to them must be sought for in the statutes and the interpretation thereof in the Supreme Court decisions.

We must begin with the premise that the public trustee of Arapahoe County functions at least until such time as the land in his county becomes annexed to another county. After annexation of such land lies the field of uncertainty, for trust deeds to the public trustee do not provide for a successor in trust, neither do our statutes so provide. An examination of the charter of the City and County of Denver fails to reveal any light on the question of a successor in trust. Therefore, unless the public trustee of the county, whose lands become annexed, is authorized and empowered in some manner by law to continue his functions, the office of public trustee as to such lands becomes vacant and it would then be necessary to apply to the courts for the appointment of a trustee to act. Such procedure, of course, would be expensive and involved.

Section 1, Article XII, of the Constitution of the State of Colorado, provides as follows: "Every person holding any civil office under the state or any municipality, shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified." Following this constitutional provision, our Supreme Court, in the case of *Clark v. Duval*, 61 Colo. 156 Pac. 144, held that the treasurer of Weld County, who was ex-officio public trustee of said county, was empowered to execute a deed under a foreclosure of a trust deed, even though Weld County became a county of the second class, in which public trustees are appointed by the governor. In construing the constitutional provision, above quoted, the court said, "that the evident purpose of said provision is to prevent the interruption in public business which results from a vacancy in office, and courts will not, except in clear cases, interpret laws so as to defeat that purpose. For this reason courts, when not governed in their decisions by statutory provisions, do not recognize a right to resign an office when such resignation will produce a vacancy to the injury of the public."

It might be argued that the mere fact of annexation ipso facto, by operation of law, causes the public trustee in the annexing county to become the public trustee authorized to function under deeds of trust theretofore executed to the public trustee of the county whose land has been annexed. In the opinion of the writer, this contention is wishful thinking because the entire procedure governing public trusteeship is purely statutory and any extension of their powers and duties cannot be implied. Legislative enactment seems to be required. See Sections 85 to 94, Chapter 40, 1935 C.S.A., where the statutes specifically authorize the public trustee of one county to execute releases of deeds of trust executed to the public trustee of the former county. In the absence of such legislative enactments it would appear that they would have no such authority.

Therefore, it seems to be quite clear that all proceedings in connection

with the sale, issuance of certificates of purchase, trustee's deeds and releases of trust deeds made to the public trustee of the County of Arapahoe on lands thereafter annexed by the City and County of Denver, should be handled by that official until appropriate action is taken by the legislature to empower the public trustee of the City and County of Denver to act as the successor in trust. The releases of such trust deeds should then be recorded in the office of the county clerk and recorder of the City and County of Denver.

### New Title Standards

The Real Estate Standards Committee of the Denver Bar Association announces the adoption of the two following standards:

Standard No. 55

Release of Trust Deed on Property Annexed  
by the City and County of Denver.

*Problem:* After a deed of trust to the Public Trustee of Arapahoe County on real estate in said county was recorded, the real estate was annexed to the City and County of Denver. Thereafter a release of the deed of trust was executed by the Public Trustee of Arapahoe County. Is this release sufficient and marketable without requiring an additional release from the Public Trustee of the City and County of Denver?

*Answer:* Yes.

*Note:* The same rule applies to any other land annexed by the City and County of Denver from adjoining counties.

In the event foreclosure of such a deed of trust becomes necessary, court procedure should be used in order to obviate possible problems.

Promulgated August 5, 1948.

Standard No. 56

Deed to Grantee by Christian Name.

*Problem:* Should a title be passed where

- (a) John Doe and Mary Doe convey their title, which was acquired as  
"John and Mary Doe"?
- (b) John T. Doe and Mary Doe convey their title, which was acquired as  
"John T. and Mary Doe"?

*Answer:* Yes.

*Note:* If a full middle name is used instead of the initial, the title is not marketable, for example:

John Townsend Doe and Mary Doe convey their title, which was acquired as

"John Townsend and Mary Doe."

Promulgated August 5, 1948.