

STANDARD NO. 202

PROBLEM:

What records and indices should be examined and for what time period?

RECOMMENDATION:

The documents recorded and indexed as set forth below and recorded in the registry of deeds for all counties in which the real property is located during the period of interest, supplemented by documents filed elsewhere as set forth below and as referenced in documents recorded in those registries, or of which the examiner otherwise has notice.¹

A. Grantor Index:

1. during the period of interest
2. for a period of three years² after the period of interest for the following items for which priority is dependent on the date the lien arose or was created and not the date of recording:
 - a. Municipal tax liens, state hazardous waste liens and condominium association liens recorded during or within three years following the period of ownership, relying on index entries tax lien, state lien or other lien.
 - b. Mechanics' liens, water and electrical utility liens on rental property, water district and sewer district liens filed during or within 120 days of the period of ownership, relying on index entries indicating a lien (consult enabling legislation to confirm time period for particular water or sewer district).

¹ NOTE: The recording act, 33 M.R.S. Section 201, and the priority it establishes applies to the "conveyance of an estate in fee simple, fee tail or for life, or lease for more than 2 years or for an indefinite term" and "[c]onveyances of the right, title or interest of the grantor". Other documents affecting title may be recorded by statutory requirement or by custom in the applicable registry of deeds or may be recorded or filed by statutory requirement elsewhere including other registries of deeds, courts, municipalities, county commissioners records, the Coastal Island Registry, the office of the Secretary of State, the Bureau of State Parks and Public Lands, other State agencies, and the like. Unless required by statute to be recorded in the registry of deeds being searched, documents referenced as recorded in such other public records need not be rerecorded in the registry of deeds being searched.

² NOTE: If an examiner encounters a lien filed earlier or later than contemplated by the above guidelines, the examiner may, in the exercise of professional judgment, pursue off record information to determine the status of the underlying claim.

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3. for a period of 20 years² preceding the date of the abstract for all current and prior parties in interest, including proposed grantees, relying on index entries such as UCC, municipal lien, mechanics' lien, tax lien, state lien or other lien, to include the following:
 - a. Federal tax liens after November 7, 1984 filed within ten years and one month of the assessment date.³
 - b. State tax liens recorded within ten years of the date the assessment became final, commencing 1/1/1970.^{3,4}
 - c. UCC's recorded or continued within five years of the date of abstract.
 - d. Federal judgments on a debt in favor of the United States filed within twenty years of the date of judgment.⁵
 4. for a period of 11 years² preceding the date of death of the decedent, for heirs or devisees.
 5. If title is transferred due to the death of the record owner or by a deed that the record shows or the examiner actual has knowledge was a gift from the record owner, then the record owner's name should continue to be run in the grantor index until there is a recorded deed of the real estate to a purchaser for value.⁶
- B. Grantee Index (relying on "to" and "from" in combined grantor/grantee indices) during the period of interest, except for municipalities, lending institutions, and the State of Maine and its agencies.

³ NOTE: Both the federal and the state tax lien statutes allow the tax lien to attach to interests in real estate acquired by the taxpayer after the filing of the lien. While the federal tax lien does not have priority over the interest of a purchase money mortgage on the after-acquired property, the state tax lien may have priority over such mortgagee's interest. The rule regarding purchase money mortgages is found in IRS Rev Rule 68-57 and is therefore subject to administrative rule changes. Note that the federal and state tax liens are not limited to liens for income taxes, and that the federal period runs from the date of assessment, while the state period runs from the date the assessment became final. (26 USC Section 6502, as amended by the Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, Section 11317 and 36 M.R.S. Section 175-A).

⁴ NOTE: The State may claim 19-A M.R.S. Section 2357 child support liens are to be treated as general state tax liens under 36 M.R.S. Sec. 175-A.

⁵ 28 U.S.C. § 3201.

⁶ NOTE: A grantee which inherits real estate or receives it as a gift is not protected by the recording act against previously delivered but unrecorded deeds. See *Hayden v. Russell*, 119 Me. 38 (1920) and *Bragg v. Paulk*, 42 Me. 502 (1856).

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C. Probate Records, as follows:

1. Prior to December 31, 1980: Records for every individual who died owning an interest in the locus.
2. On and after January 1, 1981: Records for such individuals should be examined only when registry records concerning devolution of title from them are incomplete.

Caveat. Even where there are statutorily complete abstracts and deeds from personal representatives, consider a review of the abstracted document and complete probate file for:

- i. the status of state and federal estate tax liens*
- ii. orders affecting a personal representative's authority*
- iii. errors in identifying heirs*
- iv. errors in the description*
- v. other sections of the abstracted document which purport to affect title to the property*

D. Court Records (where examiner has notice or there is some indication otherwise on the record of litigation involving the locus), unless documents that meet the criteria of 14 M.R.S. Section 2401 have been recorded in the registry of deeds, in which case the examiner may rely on the recorded documents.

E. Maps and Plans of Locus (if referred to in instruments in the chain of title).

F. Divorce Records (where the examiner has actual notice, or there is some indication on the record, of a divorce involving a record owner during the period of examination), unless there is a release deed of record from the non-owner spouse or an appropriate recorded abstract of divorce judgment awarding title. See also Title Standard 804. Where the record indicates that the proponent of title is married and a deed for value does not include the non-owner spouse's signature, examination of the relevant registry record should continue through time of closing to insure that the property has not become subject to disposition by a court exercising jurisdiction under 19-A M.R.S. §953 (19 M.R.S. §722-A was repealed and replaced October 1, 1997).

Caveat: Even where there is an appropriate abstract of divorce judgment, consider consulting the full decree, especially to confirm the description and to determine whether any conditions are required or implied.

Caveat: Many abstracts fail to comply with the statute in force at the time of recording of the abstract.

G. United States Bankruptcy Court Records (where the examiner has notice or there is reference in the record of a bankruptcy proceeding involving a party-in-interest).

H. Coastal Island Registry of the Bureau of Parks and Lands (as applicable). See Standard No. 209.

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- I. Condominium Records. Where the locus is a condominium unit, the examiner should examine the indices and records for entries under the name of the condominium building (where the condominium was formed under the Maine Unit Ownership Act) or the names of the condominium and of the unit owners' association (where the condominium was formed under the Maine Condominium Act), as such names are set out in the recorded declaration establishing the condominium, from the date of recording of the declaration.

NOTE: Since January 1, 1983, nonpayment of common expenses, fines and certain other matters set forth in 33 M.R.S.A, section 1603-116, give(s) rise to automatic liens against units (without the necessity of a recorded notice) from the time the assessment becomes due. The Maine Condominium Act (at 33 M.R.S., Section 1601-102) changes contrary provisions regarding liens set forth in the Unit Ownership Act at 33 M.R.S., Section 561 (1). The lien is extinguished unless proceedings to enforce it are instituted within 3 years after the full amount of the assessments become due. 33 M.R.S.A, Section 1603-116 (e). Title examiners should in all instances contact the condominium association to determine whether there are past due common charges or fines which constitute an unrecorded lien. Where the prospective conveyance is not from the condominium declarant, a resale certificate from the condominium association will provide adequate notice to the buyer. See 33 M.R.S., Section 1604-108.

- J. Limited Liability Company Act. As of January 1, 1995, Grantor index for statement of authority certified by Secretary of State's office and filed with that office by a limited liability company within five years prior to a conveyance by a limited liability company. See also Standard 414.

NOTE: This requirement results from Title 31 M.R.S. Section 626, which was repealed effective June 30, 1998.

ADDITIONAL CAVEATS:

- 1. Parties-in-interest, under certain circumstances, may include tenants, lessees, vendees, obligees, mortgagees, optionees, and other claimants of whom the examiner has notice.*
- 2. The index may be unreliable with respect to its recitation of location and type of instrument. See Title Standards 203 and 204. The index is not part of the official public record.*
- 3. The discovery of a document legally insufficient to provide constructive notice, may, by virtue of the examiner's discovery, provide actual notice to a prospective lender, purchaser or creditor*
- 4. Many registries maintain unique records and indices such as un-indexed ancient plan folders, local historic and sites-of-interest reference books, special indices for certain types of encumbrances for certain periods, non-alphabetical or partially alphabetical indices for certain periods, taxpayers listed in the grantee index for tax liens, etc.*
- 5. Not all liens are enumerated in this standard. New types of liens may be created or the effect of existing liens altered. Consequently, this standard must be read in the context of changing statutes, regulations and case law.*

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CITED IN:

Roberts v. Frank L. McKinney, Inc., 485 A.2d 647, 650-651 (Me. 1984)

"The buyer is charged with notice of the fatal defect in the Robertses' title. A title search conducted in August 1983 in compliance with the Maine Title Standards issued by the Maine State Bar Association would have revealed the fatal defect in the proceedings leading up to the sheriff's sale. Maine Title Standard 207 (1984).(fn3) Furthermore, examination of the complete record of this proceeding, pursuant to Maine Title Standard 202, Recommendation E (1984),(fn4) would have revealed McKinney's 1980 motion (still pending in August 1983) attacking the validity of the sheriff's sale. Cf. *City of Auburn v. Mandarelli*, 320 A.2d 22 (Me.), appeal dismissed, 419 U.S. 810, 95 S.Ct. 25, 42 L.Ed.2d 37 (1974) (purchasing party charged with notice of recorded tax lien)."

First Adopted August 25, 1960; amended June 19, 1975, December 7, 1983, February 27, 1990, October 29, 1991, November 15, 1994, May 16, 2001, March 15, 2002, October 5, 2004, September 20, 2006, August 19, 2008, November 19, 2014, and June 26, 2015. Formerly Title Standard No. 3.