

STANDARD NO. 311

PROBLEM:

- A. May a title examiner rely only on the dates and times that deeds and mortgages are recorded in a registry of deeds to determine the order in which the documents were delivered?
- B. If related deeds and/or mortgages are signed on the same date but recorded in an illogical order, may the title examiner rely on the assumption that the deeds and mortgages were delivered in a logical order?
- C. May a title examiner rely on the doctrine of after-acquired title when warranty deeds and/or mortgages with warranty covenants are dated before the instrument by which the grantor/mortgagor acquired title? For example, a deed from A to B is dated April 1, 2016, but the mortgage from B to C is dated March 30, 2016.
- D. May a title examiner rely on a recorded affidavit from a disinterested person with actual knowledge to establish the time of delivery of a deed or mortgage?

RECOMMENDATIONS:

- A. No.
- B. Yes
- C. Yes.
- D. Yes.

DISCUSSION:

The transfer of title occurs upon the delivery and acceptance of the deed or mortgage, not the date that the document was signed or the date that the document was recorded in a registry of deeds, which is just the means of providing notice of an historic event. Maine law provides that a deed's appearance on the record does not per se operate as delivery. *City of Auburn v. Mandarelli*, 320 A.2d 22 (Me. 1974). In addition, when the physical possession of a deed is transferred from one party to another, there is a presumption that both parties intended to effect an immediate transfer of the title, in accordance with the terms of the deed. *Waxler v. Waxler*, 699 A.2d 1161 (Me. 1997). "Delivery of a deed occurs at the moment when the deed is in the hands of the grantee, or, what in law is the very same thing, in the hands of some person eligible

to have it for him, with the consent of the grantor, and beyond his control, with intent on the part of the grantor that the deed should operate and inures as a muniment of title to the grantee. Whenever by acts or words, or both acts and words, the grantor so assents to the possession of the deed, then and not until then, is delivery of the deed complete.” *Gatchell v. Gatchell*, 127 Me. 328, 143 A. 169 (1928).

Therefore, it is reasonable for a title examiner to assume that deeds and mortgages were delivered on the date they were signed, unless there is evidence of a different delivery date in the deed or mortgage, known to the title examiner, or otherwise of record. It is also reasonable for the title examiner to assume that a grantee accepted delivery of the deed or mortgage on the date that it was signed if it is recorded in a registry of deeds, unless there is evidence to the contrary in the deed or mortgage, known to the title examiner, or otherwise of record.

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