

STANDARD NO. 407

PROBLEM:

- A. May title to real estate be acquired in the name of a partnership, by partnership name only?
- B. May title to real estate be conveyed in the partnership name, by partnership name only?
- C. Where title to real estate is in the partnership name, who may convey title to such property by conveyance executed in the partnership name?
- D. On the death of a partner, what are (1) the nature of, and (2) the relative interests of the surviving partner or partners, surviving spouse, heirs or devisees, or legal representative in such partner's interest in specific partnership real estate?
- E. Where a grantor in the chain of title was a partnership, should the examiner require evidence of partnership authorization for the sale or mortgage?

RECOMMENDATION:

- A. Yes, See 31 M.R.S. §1024 (partnership), §1304 (limited partnership). It is recommended that deeds or other conveyances to a partnership be in generally the following form after recitation of consideration: "paid by ABC Company, a Maine partnership (or limited, limited liability or limited liability limited partnership), whose mailing address is _____, the receipt whereof _____ does hereby acknowledge, does hereby give, grant, bargain, sell and convey (or appropriate short form deed language) unto the said ABC Company, its successors and assigns forever..."
- B. Yes, title acquired in the partnership name can be conveyed only in the partnership name. See 31 M.R.S. §1023, §1024 and §1032 (partnership), §1304 (limited partnership). Any partner in a partnership that held real property in the partnership name before October 3, 1973 may have reserved any rights and claims relating to the property and specifically derived from the partnership relationship by filing a notice in the Registry of Deeds for the county in which the property is located within two years after September 30, 1989 in accordance with former 31 M.R.S. §288 (1)(A). See former 31 M.R.S. §§288 and 290.
- C. Any general partner may convey title to real estate which is in the partnership name by conveyance executed in the partnership name. See 31 M.R.S. §1032 (partnership), §1352 (limited partnership).
 - 1. Any partner in a partnership that held real property in the partnership name before October 3, 1973 may have reserved any rights and claims

relating to the property and specifically derived from the partnership relationship by filing a notice in the Registry of Deeds for the county in which the property is located within two years after September 30, 1989 in accordance with former 31 M.R.S. §290(1)(A). See former 31 M.R.S. §290.

2. Any partner in a partnership that held real property in the partnership name before October 3, 1973, which has continued to hold record title to the real property in the same name until September 30, 1989, may or may not have reserved any rights and claims relating to the property and specifically derived from the partnership relationship by filing a notice in the Registry of Deeds for the county in which the property is located at any time before the later of (1) two years after September 30, 1989, or (2) the recording of a conveyance for value to an unrelated 3rd party, in accordance with former 31 M.R.S. §290 (1)(B). See former 31 M.R.S. §290.
- D. The interest of a partner in specific partnership real estate, whether or not he is alive, is personal, as opposed to real property. On the death of a partner such interest in specific partnership real estate vests in the surviving partner or partners, unless the deceased was the last surviving partner, in which case his interest in such property vests in his legal representative. A partner's right to specific partnership real estate is not subject to marital claims or the claims of heirs or devisees. 31 M.R.S. §§1023, 1051-2, 1083(2) (partnership), §§1302(22), 1381 (limited partnership).
- E. Whether the conveyance is signed by one or more partners, a showing of the authority of the partner or partners signing should be required only for a pending conveyance or mortgage from a partnership carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership, and such evidence need not be recorded. 31 M.R.S. §1031 (partnership), §1352 (limited partnership).

DISCUSSION:

The above principles also apply to limited liability partnerships, 31 M.R.S. §821, limited partnerships, and limited liability limited partnerships. Former 31 M.R.S. §159 (repealed January 1, 1992); and statutes cited above. Note that the Uniform Partnership Act no longer governs limited partnerships. Uniform Limited Partnership Act (2001) Prefatory Note (The Decision to De-Link and Create a Stand Alone Act). See Standard No. 406, where the fact of partnership is not apparent on the record.

Prior to the adoption in 1973 of the Uniform Partnership Act in Maine, the partnership was not recognized as an entity and could not hold title to real estate. Partners held title to real estate as tenants in common. There were partnerships formed in other states, particularly New Jersey, that purported to hold title to real property in Maine in partnership name. However, due to the principle that the law of the state where the property is located governs the ownership and disposition of real property, the title was considered to be held by the partners as tenants in common and conveyances in partnership name, without the names of the partners as grantors signing as individual tenants in common and spousal releases, raised questions of marketability of title to the real estate.

The Legislature sought to address the situation in 1989 by enacting P.L. 1989, chapter 120, §§ 1 and 2, permitting pre-1973 partnerships retroactively to acquire and convey real property, with the protection of a two year window in which a partner may file a notice to protect an interest affected by the legislation. An interest in property held continuously in partnership since 1973 and not yet conveyed to a third party may continue to be protected by a recorded notice.

Based upon the assessment of the risk of creditors' claims against the partners, the examiner may try to determine the names of the partners of a partnership that held title to property in partnership name prior to 1973 in order to run the names in the Registry of Deeds during the period of ownership from 1973 or before through the later of (1) two years after September 30, 1989 or (2) the time of the conveyance for value to an unrelated 3rd party. The statute does provide for a marginal reference for the notice filed by the partner, but the marginal reference may not be done or done properly in all counties.

*First adopted June 19, 1975; amended May 20, 1997, September 20, 2006 and May 22, 2018.
Formerly Title Standard No. 57.*