

STANDARD NO. 801

PROBLEM:

- A. Is the signature of a non-owner spouse required on a conveyance of real property dated prior to January 1, 1981 (the effective date of the Maine Probate Code)?
- B. Is the signature of a non-owner spouse required on a conveyance of real property dated after December 31, 1980?

RECOMMENDATION:

- A. No. See DISCUSSION below.
- B. No, but if the grantee in the conveyance is not a bona fide purchaser, signature of the non-owner spouse is recommended to protect the grantee. See DISCUSSION below.
- C. Where there is record evidence that the Grantor is a party to a divorce proceeding, see Title Standard 804.

DISCUSSION:

- A. Title 33 M.R.S. §§ 470-475, together with the passage of time, bars all non-owner spousal claims to title unless such claims were preserved by filing a notice or claim of record pursuant to §§ 471-472.
- B. Pursuant to Title 18-C M.R.S. § 2-208 (formerly 18-A M.R.S. §§ 2-201-207, repealed September 1, 2019) and Title 33 M.R.S. § 480, title to the conveyed property is not reachable by the non-owner spouse. In a pending transaction, if the conveyance is not to a bona fide purchaser, it is strongly recommended that the non-owner spouse's signature be obtained to prevent the possibility of the grantee being required to contribute all, or some portion, of the value of the real property to make up the elective share of the surviving non-owner spouse.

When a title examiner is researching title for a pending conveyance to bona fide purchasers (including mortgagees), the lack of spousal signature in a conveyance to a grantee who is not a bona fide purchaser in the chain of title does not require remediation. This is so because under § 2-208 (formerly § 2-207), only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution requirement to make up the elective share of the surviving spouse. The obligation to contribute is the personal obligation of the transferees from, or appointees of, the decedent and their donees. All bona fide purchaser from such transferees or appointees take title free of any possible elective share contribution.

¹ Although former Title Standard 803 stated that no interest is retained by the spouses who do not release their rights by descent in a conveyance by all or less than all joint tenants, there is no exemption in 18-C M.R.S. § 2-208 from liability of the donee for contribution where the grantor held title as joint tenant.

This Standard, adopted February 25, 2003 and amended December 7, 2021, replaces Title Standard No. 801 (as first adopted, as Title Standard No. 35, April 5, 1983 and first adopted, as Title Standard No. 801, December 7, 1983), Title Standard No. 802 (as first adopted, as Title Standard No. 48, August 31, 1961, amended June 19, 1975, and first adopted, as Title Standard No. 802, December 7, 1983) and Title Standard No. 803 (first adopted, as original Title Standard No. 14, August 25, 1960, amended March 1, 1971, reserved June 19, 1975, first adopted as Title Standard No. 53, August 28, 1962, amended June 19, 1975, and first adopted as Title Standard No. 803, December 7, 1983). Formerly Title Standards Nos. 35 (Reissued 1983), 48, 53, 802 and 803.