

STANDARD NO. 804

PROBLEM:

What rights are acquired by a non-owner spouse pursuant to a divorce proceeding involving the record owner of real estate?

RECOMMENDATION:

- I. *Divorce actions pled prior to January 1, 1972:* One-third in common of all real estate of the spouse at fault passes to the other spouse, except wild lands, which shall pass to the other spouse as if the spouse at fault were dead; provided, however, that if a divorce is granted to the wife for the impotence of the husband, then the wife received no share of the husband's real estate. Further rights may be awarded by the court. Upon divorce, the spouse at fault lost all claim by marriage to the real estate of the other spouse. See Revised Statutes of 1954, Chapter 166, Sections 63 and 65.
- II. *Divorce actions filed between January 1, 1972 and July 25, 1984:* The court either *shall* determine the real estate to be the non-marital property of the owner spouse, or *shall* award the marital real estate to one or both spouses. If the court does neither, a deed from the non-owner spouse *after* the marriage is terminated is required. See 19-A M.R.S. §953 (19 M.R.S. §722-A was repealed and replaced October 1, 1997).
- III. *Divorce actions filed subsequent to July 25, 1984:* Unless proper evidence of divorce proceeding appears of record in Registry, examiner may disregard any claim by the non-owner spouse. See 33 M.R.S. §480, Public Laws of 1983, Chapter 748. When evidence does appear of record, see II.
- IV. *Out-of-State Divorce Actions:* Although a foreign divorce decree disposing of Maine real estate cannot act directly on that real estate unless it is confirmed by a Maine court, it may be binding on the parties as a final determination of their rights and a division of their marital property. *DeVlieg v. DeVlieg*, 492 A.2d 605 (Me. 1985). Any foreign divorce decree may be relied upon in Maine and is binding on Maine real estate when both:
 - A. *Recording in the Registry of Deeds:* A duly authenticated copy of the foreign divorce decree is recorded in the appropriate Registry of Deeds in accordance with 19-A M.R.S. §953(8) (19 M.R.S. §725 (4) was repealed and replaced October 1, 1997); and
 - B. *Court Action:*
 1. An authenticated copy of the foreign divorce decree is filed with a Maine court in accordance with all provisions of the Uniform Enforcement of Foreign Judgments Act (14 M.R.S. §§8001-8008). Only the Maine court record needs to be reviewed pursuant to Title Standard 207; or
 2. For foreign divorce decrees not filed with a Maine court in accordance with the Uniform Act, the examiner has confirmed that the foreign court had jurisdiction over the parties and that the divorce action was conducted in accordance with laws of the foreign state.

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V. *Abstract as deed:*

- A. From August 20, 1955 until September 12, 2003: For an abstract to act as a deed between the parties, it must contain: (1) the names of the parties; (2) the date of the decree; and (3) the court where granted. See 19-A M.R.S. §953(7), formerly 19 M.R.S. §725 (was repealed and replaced October 1, 1997). See also 33 M.R.S. §353-A(9), which validates all decrees without residences, as formerly required, recorded prior to March 24, 1987.
- B. From September 13, 2003 to date: For an abstract to act as a deed, it must contain: (1) the caption on the case with the parties' names, including name changes after the decree; (2) the date the judgment is final and the court which issued the decree; (3) an adequate description of the real estate; and (4) a clear statement of the ownership interests of the parties in the real estate intended to result from the decree. See 19-A M.R.S. §953(7), as modified by P.L. 2003, Ch. 18.

NOTE: "an inconsequential failure to provide all details required" does not create an invalid abstract.

NOTE: To create an encumbrance on the real estate for the benefit of one of the parties as a result of the divorce judgment, the standards of 19-A M.R.S. §953(7)(D) must be met.

CAVEAT: If the decree contains language such as "wife *shall* give a deed to husband," a deed is necessary in addition to the abstract.

VI. *Recording requirements:* After August 20, 1955, no decree affects the real estate rights of parties to a divorce, unless recorded according to the following rules, which apply to the date of the divorce decree:

1. From August 20, 1955 until September 1, 1955: No rights acquired by the libellant in the real estate of the libelee are effective against any person except the libelee, his heirs and devisees and persons having actual notice of the divorce, unless the decree or an abstract of the decree is recorded in the county where the real estate is located. Public Laws of 1955, Chapter 428.
2. From September 2, 1955 until September 15, 1961: No rights acquired by the libellant in the real estate of the libelee are effective against any person except the libelee, his heirs and devisees and persons having actual notice of the divorce, unless the decree or an abstract of the decree is recorded in the county where the real estate is located; *provided*, however, that no rights acquired by a libellant in the real estate of the libelee are effective against the libelee or any other person, unless the decree or an abstract of the decree is recorded within one year from the date of the decree. Public Laws of 1955, Chapter 428. (*But see* Section 7, *infra*).

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3. From September 16, 1961 until December 31, 1971: No rights acquired by the plaintiff in the real estate of the defendant are effective against any person except the defendant, his heirs and devisees and persons having actual notice of the divorce, unless the decree or an abstract of the decree is recorded in the county where the real estate is located; *provided*, however, that no rights acquired by a plaintiff in the real estate of the defendant are effective against the defendant or any other person, unless the decree or an abstract of the divorce order is recorded within one year from the date of the divorce order. Public Laws of 1961, Chapter 317, Section 65-A. (But *see* Section 7, *infra*).
4. From January 1, 1972 until March 14, 1972: No rights acquired by a party in the real estate of a party are effective against any person except a party, his heirs and devisees and persons having actual notice of the divorce, unless the decree or an abstract of the decree is recorded in the county where the real estate is located; *provided*, however, that no rights acquired by a plaintiff in the real estate of the defendant are effective against the defendant or any other person, unless the decree or an abstract of the divorce order is recorded within one year from the date of the divorce order. Public Laws of 1971, Chapter 399, Section 5. (But *see* Section 7, *infra*).
5. From March 15, 1972 until September 30, 1975: No rights acquired by a party in the real estate of a party are effective against any person except a party, his heirs and devisees and persons having actual notice of the divorce, unless the decree or an abstract of the decree is recorded in the county where the real estate is located; *provided*, however, that no rights acquired by a party in the real estate of the other party are effective against any party or any other person, unless the decree or an abstract of the decree is recorded within 60 days from the date of the decree. Public Laws of 1971, Chapter 622, Section 61-E. (But *see* Section 7, *infra*).
6. October 1, 1975 to date: Any rights acquired by a party in the real estate of another party are effective against any person when the decree or a proper abstract is recorded in the county or registry district where the real estate is situated. (*See also* Section 7, *infra*). Public Laws of 1975, Chapter 488 (now 19-A M.R.S. §953(7)).
7. Effective March 28, 1980, the failure of a party to record a decree or abstract within the time limits described in paragraphs 2, 3, 4 and 5 above, did not affect the rights of that party as against the other party, his heirs and devisees. Public Laws of 1979, Chapter 663, Section 128 (now 19-A M.R.S. §953(7)). *See also* *Eich v. Gellerson*, 441 A.2d 315 (Me. 1982).