

STANDARD NO. 902

PROBLEM:

Should the examiner rely on a deed in the chain of title from a municipality or a sheriff which conveys the interest in real estate taken for unpaid municipal taxes, which deed does not run to the delinquent owner or his or her successor in interest?

RECOMMENDATION:

No, except under the following circumstances:

- (a) *With respect to municipal tax liens recorded after October 13, 2014*, if the period of redemption of the municipal tax lien upon which the taking is based expired more than 5 years prior to the date of search and no action against the validity of the taking was commenced during the 5 year period following the expiration of the right of redemption. See 36 M.R.S. §946-B(1);
- (b) *With respect to municipal tax liens recorded after October 13, 1993 and on or before October 13, 2014*, if the period of redemption of the municipal tax lien upon which the taking is based expired more than 15 years prior to the date of search and no action against the validity of the taking was commenced either during the 15 year period following the expiration of the right of redemption or on or before October 13, 2019, whichever is earlier. See 36 M.R.S. §946-B(2);
- (c) *With respect to municipal tax liens recorded on or before October 13, 1993*, if no action against the validity of the taking was commenced either during the 15 year period following the expiration of the right of redemption or on or before July 1, 1997, whichever is later. See 36 M.R.S. §946-B(3); or
- (d) If the deed is confirmed by court decree or judgment.

Caveat: Title 36 M.R.S. §946-B(4) indicates that disability or lack of knowledge of any kind does not suspend or extend the time limits set forth in the statute. But see Conroy v. Aniskoff, 507 U.S. 511 (1993), in which the U.S. Supreme Court held that the plain meaning of the Servicemembers Civil Relief Act requires that the period of military service not be included in the computation of any period provided by law for the redemption of real property.

Caveat: The examiner who relies on a tax deed which qualifies under (a), (b), (c) or (d) above must still search the title prior to the recording of such deed in order to confirm that title was in fact vested in the delinquent owner prior to the taking and to determine the legal description of the property in question. An additional period of search may also be necessary to establish a resting point under Title Standard 201. The examiner should also review the tax lien on which the municipal taking was based to determine if it is valid on its face. If, for example, it is apparent that the lien was not recorded within 10 days of the expiration of the 30 day notice to the taxpayer as required by Title 36 M.R.S. §942, the lien would be facially defective. Under such circumstances, it could be argued that the period of redemption did not begin to run and, as a consequence, that 36 M.R.S. §946-B does not operate to bar a challenge to the validity of the taking.

First adopted August 25, 1960, amended June 19, 1975, November 16, 1999, September 23, 2003, September 20, 2006, and June 26, 2015. Formerly Title Standard No. 34.

STANDARD NO. 902, Continued

CITED IN:

Diveto v. Kjellgren, 861 A.2d 618, 624 (Me. 2004):

“Consistent with this conclusion, Maine Title Standards, in an analysis of section 946-A,* calls for a title examiner relying on a tax deed to ‘search the title prior to the recording of such deed in order to confirm that title was in fact vested in the delinquent owner prior to the taking and to determine the legal description of the property in question.’ Maine Title Standards, No. 902 (1999).”

Giobbi v. Bramson, 560 A.2d 1079, 1080 (Me. 1989):

“The deed from Kragelund to Bramson is therefore a nullity. Bramson’s quitclaim deed gave him only what his grantor held. *See Manson v. Peaks*, 103 Me. 430, 433, 69 A. 690, 691 (1908). His grantor held nothing. A tax deed, absent evidence that the tax liens were properly foreclosed, is not reliable evidence of title. *See Hann v. Merrill*, 305 A.2d 545, 547 (Me.); Maine State Bar Association Title Standard No. 902 (1984). In the case at bar, not only was there no foreclosure, but there was no lien at all—not even an invalid lien.”

* Subsequently repealed and replaced with 946-B.

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