UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

2018 Fundamentals of Oil, Gas and Mineral Law

April 19, 2018
Houston, Texas

Texas Title Examination Standards

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CHAPTER IV

EXECUTION, ACKNOWLEDGMENT, AND RECORDATION

Standard 4.10. Omissions And Inconsistencies

Omission of the date of execution from an instrument affecting title does not, in itself, impair marketability. An examiner may presume that an undated instrument has been timely executed if the dates of acknowledgment and recordation, and other circumstances of record, support the presumption.

Inconsistencies in recitals or dates (such as among dates of execution, attestation, acknowledgment, or recordation) do not, in themselves, impair marketability, and an examiner may presume that a proper sequence of formalities occurred.

Comment:

The date of execution is not essential to an instrument's validity or delivery. Dunn v. Taylor, 113 S.W. 265, 268 (Tex.1908); Webb v. Huff, 61 Tex. 677, 679 (1884); Owen v. State, 26 S.W.2d 251, 253 (Tex.Crim. App.1930). See generally 5 Aloysius A. Leopold, Land Titles and Title Examination § 36.2 (Texas Practice 3d ed., 2005). The date on an instrument, like other recitals, is important, if the date is in issue, and the given date is presumptively correct, but subject to rebuttal or explanation. Farrell v. Comer, 84 S.W.2d 300, 303 (Tex.Civ.App.— Fort Worth 1935, no writ); Owens v. Jackson, 35 S.W.2d 186, 188 (Tex.Civ.App.—Austin 1931, writ dism'd w.o.j.); Brown v. Rodgers, 248 S.W. 750 (Tex.Civ.App.—Amarillo 1923, no writ). The same is true of the date of attestation and, generally, of acknowledgment. Wilson v. Curry, 151 S.W.2d 356, 358 (Tex.Civ.App.—Fort Worth 1941, writ dism'd).

The critical date—that of delivery—is not normally found in the instrument. See Standard 4.30. Hence, omission of the date from one conveyance in an ordinary series of conveyances may be disregarded. Even though special importance may attach to the date of execution, as in the case of a power of attorney, there is a presumption of timely execution (i.e., in proper sequence in relation to other instruments) if such is supported by other dates and circumstances of record.

Because recitals of dates may be omitted or explained, are notoriously inaccurate, and are more generally in error than are the actual sequences of formalities, inconsistencies in the indicated dates of formalities (e.g., acknowledgment dated prior to execution or execution dated subsequent to indicated date of recordation) should be disregarded. Further, the inconsistency or impossibility of a recited date should not be regarded as vitiating the particular formality involved. Brown v. Rodgers, supra; Wilson v. Curry, supra; Owen v. State, supra; Panhandle Construction Co. v. Flesher, 87 S.W.2d 273, 275 (Tex.Civ.App.— Amarillo 1935, writ dism'd).

Regarding instruments that have been filed for record, an examiner should consider Tex. Civ. Prac. & Rem. Code Ann. § 16.033, which contains a two-year statute of limitations that bars certain actions to recover real property based upon acts and omissions specified in the statute. For further discussion, see Comment and Caution to Standard 4.20. In addition, Tex. Loc. Gov't Code Ann. § 191.007(k) provides that a recorded instrument that fails to meet certain specifications relating to page size, paper weight, font size, legibility, and other technical matters, is deemed to have been properly recorded.

Tex. Prop. Code Ann. § 12.0011 addresses the requirements for recordation. Effective September 1, 2007, this was amended to provide that a paper document attached as an exhibit to a paper affidavit or other document having an original signature or signatures and acknowledged,

sworn to with a proper jurat, or proved according to law, may be recorded and, if recorded, imparts notice.

Effective July 1, 2018, personal appearance may be by way of two-way video and audio conference technology that meets specified standards. See Tex. Gov't Code Ch. 406, new subchapter C (addressing online notary public services).

Caution:

If, under the circumstances indicated by the record, a date has a particular significance (e.g., for a priority or for an important presumption), an inconsistency or impossibility should not be disregarded.

Source:

Citations in the Comment; Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 6.2 (1960); 5 Aloysius A. Leopold, Land Titles and Title Examination § 36.2 (Texas Practice 3d ed. 2005).

History:

Adopted June 27, 1997.

Standard 4.20. Defective Acknowledgments

If a certificate of acknowledgment does not conform to the exact wording of the applicable statute, but shows substantial compliance with the statutory requirements for acknowledgments, an examiner should not require corrective action. If a deed or other instrument contains an acknowledgment in substantial noncompliance with the applicable statute or does not contain any acknowledgment whatever, an examiner should not require that such defects be cured if the instrument has been of record for at least twenty years and no adverse claim appears. Otherwise, the examiner should require a corrected acknowledgment and re-record the instrument, or require and record a new, corrected instrument. A proper jurat may substitute for an acknowledgment for instruments recorded on or after September 1, 1989.

Comment:

In general, an instrument is entitled to be recorded only if acknowledged or proven by witnesses according to law. Tex. Prop. Code Ann. § 12.001. The proper forms for acknowledgments are expressed by statute. Tex. Civ. Prac. & Rem. Code Ann. §§ 121.001—121.015. A jurat may substitute for an acknowledgment in instruments recorded on or after September 1, 1989. Tex. Prop. Code Ann. § 12.001(a).

A jurat is a certificate signed by the officer before whom an instrument was executed, stating that the instrument was subscribed and sworn to before the officer by the person executing the instrument. Carpenter v. State, 218 S.W.2d 207, 208 (Tex.Crim. App.1949); Robertson v. State, 8 S.W. 659 (Tex.Crim. App.1888). Subject to an exception (discussed in the following paragraph), an acknowledgment certificate must include the officer's seal of office, Tex. Civ. Prac. & Rem. Code Ann. § 121.004, and this is also presumably true for a proper jurat, if the officer has a seal. Missouri Pacific Railway Co. v. Brown, 53 S.W. 1019 (Tex.1899). For a listing of the officers who may take acknowledgments or proofs, see Tex. Civ. Prac. & Rem. Code Ann. § 121.001. For a listing of officers who may administer oaths and supply a jurat, see Tex. Gov't Code Ann. §§ 602.002—602.005.

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