CHAPTER 3
CONVEYANCES

STANDARD 3.0

MARKETABILITY OF CONVEYANCES

STANDARD: FOR DETERMINING MARKETABILITY, THE ESSENTIAL COMPONENTS FOR ALL CONVEYANCES INCLUDE A WRITTEN INSTRUMENT WITH WORDS OF CONVEYANCE, SIGNED IN THE PRESENCE OF TWO SUBSCRIBING AND DISINTERESTED WITNESSES, THE IDENTIFICATION OF EXISTING AND ASCERTAINABLE GRANTORS AND GRANTEES, A SUFFICIENT LEGAL DESCRIPTION, UNCONDITIONAL DELIVERY TO THE GRANTEE AND COMPLIANCE WITH SECTION 695.03, F.S.

Problem 1: John Doe, a single person, conveyed Blackacre as a gift to Gary Grantee. Is Gary Grantee's title marketable?

Answer: Yes, in the absence of evidence of inequitable conduct by Roe.

Problem 2: Janet Jazz agreed to convey a vacant lot to Ricky Roe. To save costs, Janet prepares the deed herself and has a friend who is a notary public take the acknowledgment. Ricky signs the deed along with Janet's neighbor as a witness. Janet delivers the deed to Ricky. Four years later, is Ricky's title marketable?

Answer: No. A witness must not have an interest in the transaction. As a grantee to the conveyance, Ricky could not serve as a witness. Because the deed is less than 5 years old, F.S. § 95.231 does not apply to cure this defect.

Problem 3: Same facts as Problem 2, except instead of Ricky, the notary public signs the deed a second time as a witness along with Janet's neighbor. Is Ricky's title marketable?

Answer: Yes.

Problem 4: John Doe and Jane Smith each owned an undivided one-half interest in Blackacre. A deed to Blackacre was thereafter executed and recorded naming only John Doe as the grantor and Mary Jones as the grantee and containing the legal description for Blackacre. The deed was signed by both John Doe and Jane Smith and the notary's acknowledgment listed both John and Jane as signatories. Did Mary Jones receive marketable title to Jane Smith's 50% interest in Blackacre?

Answer: No. Although Jane executed the deed, she must also be identified as a grantor to convey title.

Problem 5: Blackacre was conveyed simply to the "Estate of Sally South" without identifying any natural person or legal entity as being the grantee. Sally was deceased at the time of the conveyance and no probate documents identifying any heirs or devisees of Sally South were recorded. Is the grantee's title marketable?

Answer: No. An estate is not a competent grantee. A grantee has to be a natural person or a legal entity capable of acquiring title.

Authorities & References: Fla. Stat. §§ 689.01, 689.02, 689.03 & 689.09 (2025); *Chase Federal Sav. and Loan Ass'n v. Schreiber*, 479 So. 2d 90 (Fla. 1985) (consideration unnecessary for a conveyance of land); *George Anderson Training & Consulting, Inc. v. Miller Bey Paralegal & Financing, LLC*, 313 So. 3d 214 (Fla. 2d DCA 2021); *Medina v. Orange County*, 147 So. 2d 556 (Fla. 2d DCA 1962); *Myers v. Francis*, 548 So. 2d 833, 834 (Fla. 3d DCA 1989); FUND TN 10.03.04; 10.03.08; *Heath v. First National Bank in Milton*, 213 So. 2d 883, 889 (Fla. 1st DCA 1968).

Comment: The Problems and this Comment are limited to a discussion of the most common issues that arise concerning the essential elements of a conveyance as they affect marketability of title. However, the conveyance of homestead property owned by a married person is not addressed here because further guidance is provided in Chapter 18 of these Standards. *See* Title Standard 18.1.

There are no specific words that must be used in a deed, but there must be operative language that is sufficient to demonstrate an intention to transfer title to an estate in the real property described. *See Tucker v. Cole*, 148 Fla. 214, 219 (Fla. 1941); *Salzman v. Ahern*, 306 So. 2d 537, 539 (Fla. 1st DCA 1975) ("Technical words of grant or conveyance are not essential in order for a deed to operate as a conveyance."); FUND TN 10.03.04 (discussing examples of words that have been found to be sufficient and insufficient for a conveyance).

Problem 1 is included to illustrate that consideration is not required for a valid conveyance. Specifically, section 689.01, Florida Statutes, which sets forth the requirements for a valid conveyance of real property do not include the receipt of consideration, and thereby significantly limits the prior common law requirements for the receipt of consideration. *Chase v. Schreiber* held that an owner of real property may convey it without consideration to any person the grantor chooses, regardless of family or marital relationship. Chase, 479 So. 2d 90. According to the Court in *Chase,* the "role of consideration in land conveyancing has been reduced to a mere matter of form except when courts choose to rely on the lack of consideration as a reason to intervene when something fraudulent or inequitable has taken place." *Chase*, 479 So. 2d at 99. With respect to such exception, a court may rescind a deed for failure of consideration where consideration is demonstrably intended by the parties as part of the transaction such as where the grantee obtained the conveyance through fraud, misrepresentation or undue influence. *Chase*, 479 So. 2d at 102.

It should be noted, however, that a recipient of an executed and delivered deed for no consideration is not entitled to protection under section 695.01, Florida Statutes, which protects subsequent purchasers for valuable consideration against unrecorded interests. *Chase*, 479 So. 2d at 101, 102.

A conveyance as a gift to a charitable institution is valid. *Montgomery v. Carlton,* 126 So. 135, 140 (Fla. 1930) (property donated to charity in which the title is vested absolutely and with no conditions vests absolute).

Problems 2 and 3 serve to illustrate how the selection and number of witnesses can affect the marketability of a conveyance. Section 689.01, F.S. does not require witnesses to subscribe in the presence of the grantor or in the presence of each other. *Sweat v. Yates*, 463 So. 2d 306, 307 (Fla. 1st DCA 1984). Nor does the statute require witnesses to sign the document before delivery is accomplished. *Id*. (reversing summary judgment based upon evidence that there were two persons who were present at time and place grantor signed deed). However, witnesses must be disinterested and cannot be parties to the conveyance. *George Anderson Training and Consulting, Inc. v. Miller Bey Paralegal & Financing, LLC*, 313 So. 3d 214, 220 (Fla. 2d DCA 2021) (citing *Liddon v. Hodnett*, 22 Fla. 442, 443-44 (Fla. 1886) to invalidate deed in part because grantee signed as witness). While a notary public can serve as one of the two required witnesses, the notary must sign twice – once on the witness signature line and again following the acknowledgment. *See Santos v. Bogh*, 334 So.

2d 833 (Fla. 3d DCA 1976) (rejecting argument that notary public's only signature on deed after acknowledgment could be considered as second subscribing witness); *Medina v. Orange County*, 147 So. 2d 556 (Fla. 2d DCA 1962); *American General Home Equity, Inc. v. Countrywide Home Loans, Inc.*, 769 So. 2d 508, 509 (Fla. 5th DCA 2000) *see also* Fla. Stat. § 117.107 (concerning prohibited acts and limitations upon Florida notaries public). There are some exceptions to the requirement for two subscribing witnesses such as those involving conveyances by corporations, The Board of Trustees of the Internal Improvement Trust Fund, and counties. Fla. Stat. § 692.01 (2025); Title Standard 4.3; Fla. Stat. § 253.431 (2025); Fla. Stat. § 125.411(2) (2025).

Problems 4 and 5 concern deeds that fail to adequately identify a grantor or grantee. An instrument signed by one or more persons not named in the granting clause is insufficient. *Heath v. First Nat'l Bank in Milton,* 213 So. 2d 883, 889 (Fla. 1st DCA 1968). Likewise, a deed which omits the name of a grantee is void and inoperative as a conveyance. *Myers v. Francis,* 548 So. 2d 833, 834 (Fla. 3d DCA 1989); FUND TN 10.04.03. *See also* Title Standards 3.1 - 3.1-6.

If the name of the grantor is missing from the top of a deed, there may be doubt as to whether the conveyance was valid to pass title. In *Heath,* a mortgage was executed by a duly authorized officer of a corporation encumbering the signatory's and his spouse's homestead property. *Heath*, 213 So. 2d at 883. In order to be a valid lien on the homestead property, the mortgage had to be signed in the presence of two subscribing witnesses and it was argued that this requirement had not been met.

The spouse's name in *Heath* was not listed at the top of the mortgage or in the certificate of acknowledgment, and, notably, she questioned whether it was her signature and also denied knowing that the mortgage was to encumber the homestead property. The court noted that there is generally a presumption that a person "intended to do that to which they subscribed their names . . .." *Id.* However, the court held that due to a lack of clear intent on the part of the spouse, it could not conclude that the mortgage was executed in a manner that complied with Article X, Section 4, of the Florida Constitution regarding encumbrance of homestead property owned by a married individual. Although this case dealt with a mortgage, it could be applied equally to a deed. Therefore, for title purposes, a signature alone on a deed without a clear showing of intent to convey, would likely not pass marketable title.

The sufficiency of legal descriptions for a valid conveyance is discussed in Chapter 21. Curative statutes as they relate to conveyances are further discussed in Title Standard 3.9.

Questions of marketability may arise if a deed of conveyance is not properly acknowledged. To impart constructive notice to subsequent purchasers and creditors, a deed must be recorded. F.S. 695.01 (2024). To entitle a deed to be recorded, an acknowledgment must comply with section 695.03, Florida Statutes. If the notarial certificate appears closer to a jurat using the words "sworn and subscribed to" as opposed to the acknowledgment form, then the deed's entitlement to recording could be challenged. *See, e.g.*, *Summa Investing Corp. v. McClure*, 569 So. 2d 500 (Fla. 3d DCA 1990) (finding mortgage did not impart constructive notice as to subsequent purchasers because of defective acknowledgment); *but see*, *Pantry, Inc. v. Mijax Manager, LLC*, 310 So. 3d 504 (Fla. 5th DCA 2020) (finding that use of jurat instead of acknowledgment on lease termination documents was at worst a failure of strict compliance with statutes, but still entitled to be recorded). To avoid any doubt, a practitioner can use the statutory forms in sections 117.05(13)(b)-(c) or 695.25, Florida Statutes. Requirements pertaining to acknowledgments are further discussed in Title Standards 3.4 and 3.5.

If a deed has been recorded, then delivery can be presumed in the absence of evidence of fraud. *Wise v. Wise*, 134 Fla. 553 (1938); *Smith v. Owens*, 108 So. 891, 1003 (Fla. 1926). The potential impact of delayed recording is further discussed in Title Standard 16.2.

CHAPTER 3

CONVEYANCES

STANDARD 3.1

AUTHORITY TO HOLD AND CONVEY TITLE - PARTIES TO CONVEYANCES

STANDARD: TITLE TO A REAL PROPERTY INTEREST MAY BE HELD AND CONVEYED BY A LEGAL ENTITY, AND TITLE MAY BE HELD BY A NATURAL PERSON BUT CONVEYED BY A NATURAL PERSON ONLY IF NOT PROHIBITED BY DISABILITY OR INCAPACITY.

Comment: One of the requirements for a valid conveyance is the legal existence of the parties, whether natural or artificial, to the conveyance. In addition, both the grantor(s) and the grantee(s) have to be adequately identified in order to create a valid conveyance. A grantor conveying in a representative capacity must possess actual authority to execute the conveyance document.

The remainder of this Chapter 3.1 discusses specific classes of grantors and grantees, both natural persons and entities, whether incorporated or unincorporated, as parties to a conveyance. Each Standard under the Chapter 3.1 heading addresses requirements for that particular class of grantor or grantee to convey or receive marketable title. Title Standard 3.1-1 covers conveyances to unincorporated associations. Title Standard 3.1-2 deals with conveyances to and from trustees of unincorporated churches. Conveyances involving fictitious names are covered in Title Standard 3.1-3. Title Standard 3.1-4 addresses the conveyance of real property in a representative capacity rather than an individual capacity. The conveying of title held by a natural person who is a minor is covered in Title Standard 3.1-5. Finally, Title Standard 3.1-6 addresses conveyances to a deceased grantee.

A word about incapacity is necessary. There are different types of incapacity that can affect a person's ability to convey title to real property. In addition to incapacity due to minority, which is addressed in Title Standard 3.1-5, there are numerous other physical, mental, and legal reasons why a person of majority might be legally incapable of executing a binding conveyance of real property. In some of those cases, a practitioner should consider the need for a formal guardianship. The topic of guardianships and real property is beyond the scope of this Chapter. Conveyances using a power of attorney are discussed in Chapter 1 of these Title Standards.

STANDARD 3.1-1

AUTHORITY TO HOLD AND CONVEY TITLE - CONVEYANCES INVOLVING UNINCORPORATED ASSOCIATIONS

STANDARD: A CONVEYANCE TO AN UNINCORPORATED ASSOCIATION DOES NOT OPERATE TO VEST LEGAL TITLE IN SUCH ASSOCIATION, UNLESS SPECIFICALLY AUTHORIZED BY LAW.

Problem 1: Blackacre was conveyed to Wildlife Hunting and Fishing Association, an unincorporated association. Later, Blackacre was conveyed by this association by its president and secretary to John Doe. Did Doe acquire marketable title to Blackacre?

Answer: No, because the association is not a legal entity capable of holding title.

Problem 2: A deed to Blueacre dated, signed and acknowledged June 1, 2022, was delivered to and accepted by, ABC Real Estate, Inc., a Florida corporation, on June 2, 2022. Articles of Incorporation for ABC Real Estate, Inc. were submitted to the Florida Department of State ("FLDOS") on June 1, 2022, however, FLDOS did not accept the filing until June 8, 2022. Did ABC Real Estate, Inc. acquire marketable title to Blueacre?

Answer: No, because the corporation did not exist as of the date of acceptance of the deed.

Problem 3: Same facts as Problem 2, except that the deed to Blueacre was not delivered to ABC Real Estate, Inc. until June 23, 2022. Did ABC Real Estate, Inc. acquire marketable title to Blueacre?

Answer: Yes. Although the deed was dated, fully executed, and acknowledged before ABC Real Estate, Inc. legally existed, the deed was not delivered and accepted until after incorporation.

Authorities & References: *Reid v. Barry*, 93 Fla. 849, 112 So. 846 (1927) (unincorporated religious society); *Daniels v. Berry*, 513 So. 2d 250 (Fla. 5th DCA 1987) (unincorporated civic association); *Escambia Properties, Inc., v. Largue*, 260 So. 2d 213 (Fla. 1st DCA 1972) (corporation formed after delivery of deed); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 10.02 (Bender 3d ed. 1996); FUND TN 10.04.05, 10.04.09 & 11.01.05.

Comment: Though most unincorporated associations are not legal entities capable of acquiring or conveying real estate, there are some exceptions. If a business trust is a legal entity for purposes of holding title under the laws of the country or state where it was formed, then it would be considered a legal entity with the same powers and abilities in Florida. *See* FUND TN 31.01.01.

Another exception to the rule is found in Chapter 622 of the Florida Statutes governing foreign unincorporated associations. A "foreign unincorporated association" is defined in Fla. Stat. § 622.02(1) (2025) as an "unincorporated joint stock association for profit, created and existing under the laws of any state other than [Florida], or of the District of Columbia, or of any territory or possession of the United States engaged in any business or businesses other than banking, trust, or insurance business, and having written articles of association, capital stock divided into shares, and a name including the word "company" or "association" or "society…." The term "association" is also defined and includes "any foreign association that shall have qualified, in the manner permitted by [Chapter 622], to transact business and acquire, hold, and dispose of property, and sue and be sued in this state." Once properly qualified, under Fla. Stat. § 622.03 (2025), a foreign association may acquire, hold, and dispose of Florida real property.

Problems 2 and 3 illustrate the importance of formation before the date of delivery of a deed into an entity. Although the deed may bear a date that is prior to the date of formation of the grantee, marketability of title is determined by the date of delivery of the deed. See Title Standard 3.6 for additional information on dates of instruments of conveyance.

For a discussion of conveyances involving joint ventures and partnerships, see Title Standard 3.1-4.

STANDARD 3.1-2

AUTHORITY TO HOLD AND CONVEY TITLE: CONVEYANCES TO AND BY TRUSTEES OF UNINCORPORATED CHURCHES

STANDARD: EVERY DEED OR OTHER INSTRUMENT TRANSFERRING REAL PROPERTY TO NAMED OR UNNAMED TRUSTEES OF A NAMED UNINCORPORATED CHURCH VESTS TITLE TO THE PROPERTY IN THE TRUSTEES OF THE UNINCORPORATED CHURCH AND THEIR SUCCESSORS WITH FULL POWER AND AUTHORITY TO CONVEY AND MORTGAGE THE PROPERTY TRANSFERRED.

Problem 1: The deed to Blackacre transfers the property to "the trustees of United Kingdom Church." United Kingdom Church is an unincorporated church. May the trustees of United Kingdom Church convey the property to John Doe?

Answer: Yes.

Problem 2: Same facts as Problem 1, except the deed to Blackacre listed the grantees as “John Doe, Richard Roe, and Michael Poe, as trustees of United Kingdom Church.” None of the three trustees named in the deed is still serving as a trustee. Rather, the trustees are Mary Smith, Kathy Johnson, and Jennifer White. Will a deed from “Mary Smith, Kathy Johnson, and Jennifer White, as trustees of United Kingdom Church” convey marketable title to Blackacre?

Answer: Yes.

Authorities & References: Fla. Stat. § 692.101 (2025); 45 Fla. Jur. 2d *Religious Societies* § 9 (1998); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 10.10 (Bender 3d ed. 1996); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE § 3.70 (Fla. Bar CLE 4th ed. 1996); FUND TN 6.03.01.

Comment: Paragraph 3 of Fla. Stat. § 692.101 (2025) states that the pastor, secretary, or other authorized administrative personnel of an unincorporated church may execute an affidavit stating the names of the trustees of the unincorporated church as of the date stated in the affidavit. Such an affidavit is conclusive as to the facts stated therein as to purchasers and mortgagees without notice.

All deeds and mortgages executed by the trustees of an unincorporated church and recorded in the public records of the county where the real property is located prior to the effective date of the statute, May 21, 1986, are good and valid if they were not contested by suit commenced within two years after the effective date of the statute.

STANDARD 3.1-3

AUTHORITY TO HOLD AND CONVEY TITLE - CONVEYANCES INVOLVING FICTITIOUS NAMES

STANDARD: A DEED OR OTHER INSTRUMENT WHICH PURPORTS TO CONVEY TITLE FROM A GRANTOR IDENTIFIED ONLY BY ITS FICTITIOUS NAME, WHETHER THE NAME IS REGISTERED OR NOT, DOES NOT CONVEY MARKETABLE TITLE BUT A DEED OR OTHER INSTRUMENT FROM A NATURAL PERSON OR LEGAL ENTITY FOLLOWED BY THE DESIGNATION "DOING BUSINESS AS," "DBA," OR OTHER SIMILAR DESIGNATION CONVEYS MARKETABLE TITLE TO THE GRANTEE.

Problem 1: A deed to Blackacre names as the grantee "Doe Properties" without language identifying the grantee as a legal entity formed under the laws of any jurisdiction. Can a subsequent deed from "Doe Properties" without any identifying language to Robert Smith convey marketable title to Blackacre?

Answer: No.

Problem 2: Same facts as Problem 1 except that the grantee in the deed is shown as "John Doe, doing business as Doe Properties" and John Doe has registered the name "Doe Properties" with the Florida Division of Corporations. Two years later, "John Doe, doing business as Doe Properties" executes a deed conveying Blackacre to Robert Smith. Does the deed to Robert Smith convey marketable title to Blackacre?

Answer: Yes.

Problem 3: Same facts as Problem 2 except that the grantor of the deed to Robert Smith is shown only as "John Doe" rather than John Doe, doing business as Doe Properties." Does the deed to Robert Smith convey marketable title to Blackacre?

Answer: Yes.

Problem 4: Same facts as Problem 2, except that before executing the deed to Robert Smith, John Doe transfers ownership of Doe Properties registration to his sister, Mary Doe, but does not convey title to Blackacre to Mary. The grantor shown on the deed for Blackacre to Robert Smith is listed as "Mary Doe, doing business as Doe Properties." Does the deed to Robert Smith convey marketable title to Blackacre?

Answer: No.

Problem 5:	Same facts as Problem 2, except that there is a recorded, certified judgment and corresponding address affidavit in compliance with F.S. 55.10 (2024) against Doe Properties. Is the judgment a cloud on the title to Blackacre which affects marketability?
Answer:	Yes.
Authorities & References:	Fla. Stat. § 865.09 (2025); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS § 10.02 (Bender 3d ed. 1996); FUND TN 10.04.02 & 18.03.09.
Comment:	Fla. Stat. § 865.09 (2025) contains the Fictitious Name Act and authorizes a person to engage in business using a fictitious name provided they register that fictitious name with the Division of Corporations of the Florida Department of State. Registration does not create a separate legal entity capable of holding title but it does allow the registrant to include its fictitious name as part of the grantee designation when taking title to real property.

Title cannot vest in a fictious person; however one can hold title under a fictious name. When title is taken only in a fictitious name without also naming the registrant it is necessary to include additional information in a subsequent conveyance or encumbrance to link the fictious name with its registrant in the land records. This can be done with an appropriate affidavit. Title Standard 3.3 discusses the use of affidavits. See also, FUND TN 10.04.02.

Fictitious names can be transferred from one person to another. However, transferring ownership of a fictitious name registration does not transfer ownership of real property that is held by the registrant when the fictitious name was included as part of the grantee designation on the vesting deed. Because legal title to the real property is vested only in the name of the registrant rather than the fictitious name, when conveying the property to a new registrant after ownership of the fictitious name has changed, it is necessary that the original registrant named as grantee on the deed convey the property to the new registrant.

Problem 5 illustrates how judgments may attach when title to real property is held by a person in their fictitious name. Because the true owner of the property is the registrant of the fictitious name but they are able to do business under their fictitious name, judgments and liens against both registrant and the fictitious name may attach to the real property.

STANDARD 3.1-4

AUTHORITY TO HOLD AND CONVEY TITLE – EVIDENCE OF AUTHORITY FOR GRANTORS ACTING IN REPRESENTATIVE CAPACITY

STANDARD: EVIDENCE OF AUTHORITY FOR THE GRANTOR IN A DEED TO CONVEY REAL PROPERTY CAN BE SUPPLIED WITHIN THE BODY OF THE INSTRUMENT OF CONVEYANCE OR BY SEPARATE AFFIDAVIT OR STATEMENT OF AUTHORITY

Problem 1: Jane Doe is a general partner of ABC Partnership, a Florida general partnership. ABC Partnership conveyed Blackacre by deed executed by Jane Doe, as General Partner, in the presence of two subscribing witnesses. The deed was properly acknowledged. Also, an affidavit identifying Jane Doe as a general partner and confirming that she was authorized to execute the deed was recorded at the same time. Did ABC Partnership convey marketable title?

Answer: Yes, absent knowledge of facts that contradict the affidavit.

Problem 2: Blackacre is owned by Restore & Flip Partnership, a Florida general partnership. Prior to purchasing Blackacre, Wendy Wise reviewed Restore & Flip's partnership agreement which states that Jerry Jones is the General Partner. Later, Wendy Wise accepts delivery of a deed that is executed by Sam Smith as General Partner. Sam Smith also executed an affidavit that states he is the General Partner and authorized to execute the deed. Did Wendy Wise acquire marketable title to Blackacre?

Answer: No. The statements in the affidavit were not supported by the partnership agreement which identified a different General Partner. Thus, there is no credible evidence of Sam Smith's authority to act on behalf of Restore & Flip.

Problem 3: Title to a commercial office building is vested in XYZ Enterprises Ltd., a limited Florida partnership. To finance renovations, the company obtains a loan and gives a mortgage to Sunshine Bank. The Mortgage is executed by John Doe, as General Partner of XYZ Enterprises Ltd. The mortgage is properly acknowledged. John Doe also executes an affidavit that identifies two current general partners and confirms that John Doe is authorized to execute a mortgage of partnership property. Did ABC Enterprises Ltd. convey a valid mortgage?

Answer: Yes.

Problem 4: Title to Whiteacre is vested in Richard Roe, as custodian or trustee of Any Company 401k Plan for the benefit of Jane Doe. A deed conveying title to Whiteacre is executed by Richard Roe, as trustee of the Any Company 401k Plan in the presence of two subscribing witnesses. The deed is properly acknowledged. Did Richard Roe convey marketable title?

Answer: Yes.

Problem 5: Title was vested in "Smith and Jones Joint Venture." Ralph Roe executes a deed on behalf of Smith and Jones Joint Venture which is recorded along with a credible affidavit identifying Ralph Roe as a general partner and confirming his authority to act on behalf of Smith and Jones. Did Smith and Jones Joint Venture convey marketable title?

Answer: Yes, because joint ventures are treated as partnerships under Florida law.

Authorities & References: F.S. 620.1406, 620.8204(2), 689.045(3) & 689.072 (2024); *Hayes v. H.J.S.B.B. Joint Venture*, 595 So. 2d 1000 (Fla. 4th DCA 1992) (joint venture).

Comment: When an instrument of conveyance is executed by someone acting in a representative capacity, care must be taken to confirm the authority of that person to act as a representative of the titleholder. Problems 1, 2, and 3 above concern the authority of a General Partner to act on behalf of a partnership.

F.S. 689.045(3) squarely addresses conveyances made to or by a partnership. However, a partnership may choose to register with the Florida Department of State. If so, the partnership may also file a statement of authority with the Department. The partnership may record a certified copy of the statement in the county where partnership property is located that specifies certain partners that can execute a deed or mortgage on behalf of the partnership.

Before relying upon a recorded statement of authority, a practitioner should confirm that the statement was filed within 5 years and that it has not been canceled. F.S. 620.8303(6) (2024). Under no circumstances should one rely upon a statement of authority when one has knowledge of contradictory information.

While evidence of authority may be supplied by an affidavit, a practitioner in a current transaction can confirm the statements made in the affidavit by reviewing the partnership agreement. If an affidavit pertains to a previously recorded deed for a past transaction, a practitioner can rely upon the affidavit in the absence of evidence or knowledge that the affidavit contained false statements.

Problem 3 is an example of when the body of the instrument contains evidence of the authority of a grantor acting in a representative capacity. F.S. 689.072 grants authority to a custodian or trustee of an individual retirement account under 26 U.S.C § 408(a)(2) to "protect, conserve, sell, lease, encumber, or otherwise manage and dispose of real property." The provisions of F.S. 689.072 are invoked when the grantee of an instrument transferring an interest in real property is "designated 'custodian,' 'as custodian,' 'trustee,' or 'as trustee.'" The instrument must also identify the account owner or beneficiary of the custodianship in the individual retirement account.

Problem 5 concerns conveyances to and by joint ventures. Partnerships and joint ventures under Part II of Ch. 620, Florida Statutes, are other types of unincorporated associations capable of acquiring or conveying title. Because joint ventures are governed by partnership law, evidence of authority for the grantor is addressed in the same fashion as for general partnerships.

For examples of other conveyances made in a representative capacity, reference is made to the following Title Standards: 1.3 (Power of Attorney); 3.1-1 (Unincorporated Associations); 3.1-2 (Churches); 3.1-3 (Fictitious Names); 3.1-5 (Minors); 4.3 & 4.3-1 (Corporations); 4.8 (Limited Liability Companies); 5.3 & 5.4 (Personal Representatives); 13.1 (Conveyances by Trustees); and 18.10 (Sale of Devised Homestead by Personal Representative).

STANDARD 3.1-5

AUTHORITY TO HOLD AND CONVEY TITLE – CONVEYANCES INVOLVING MINORS

STANDARD: MINORS HAVE THE CAPACITY TO RECEIVE AND HOLD TITLE TO REAL PROPERTY, BUT MINORS DO NOT HAVE THE CAPACITY TO CONVEY TITLE TO REAL PROPERTY EXCEPT AS AUTHORIZED BY FLORIDA LAW OR IF LEGAL DISABILITY IS REMOVED.

Problem 1: In 2015, Rachel Roe, at the age of 15, inherited Blackacre from her deceased mother. In 2016, Rachel Roe at the age of 16 gets married, and she and her spouse immediately begin residing on Blackacre as their primary homestead residence. In 2017, Rachel Roe, now age 17, joined by her spouse, conveys Blackacre to Susie Smith. Is Susie Smith's title to Blackacre marketable?

Answer: Yes. Rachel Roe's legal disability of nonage was removed upon marriage.

Problem 2: In 2022, John Doe, a minor, and his three unmarried adult brothers inherited equal interests in Whiteacre (with total fair market value of $100,000, and being unencumbered) from their deceased grandmother. In 2023, Mary Doe, a widow and natural guardian of John Doe (who is still a minor), conveys John Doe's interest in Whiteacre (whose individual interest has an aggregate value of $25,000) to John Doe's three adult brothers. Mary has not been appointed by a Florida court as guardian for John or his property. John's three unmarried brothers subsequently convey Whiteacre to Richard Roe. Is Richard Roe's title to Whiteacre marketable?

Answer: No. John received an inherited interest in Whiteacre in excess of $15,000.

Problem 3: In 2017, Sallie Smith conveys Blackacre for minimal consideration to Chris Conrad "as custodian for Molly Monroe under the Florida Uniform Transfers to Minors Act". At the time of the 2017 conveyance, Molly was 18 years old. In 2019, Chris Conrad "as custodian for Molly Monroe under the Florida Uniform Transfers to Minors Act", conveys Blackacre to Jeff Jenson. Is Jeff Jenson's title marketable?

Answer: Yes. Molly was still under the age of 21 at the time of the conveyance in 2019. A minor under the Florida Uniform Transfers to Minors Act is an individual who has not attained the age of 21 years.

Authorities & References: Fla. Stat. §§ 733.303, 743.01, 743.07(1), 744.102(13), 744.301(2)(c) & 710.101-.126 (2024); *Putnal v. Walker*, 61 Fla. 720 (1911); *Lee v. Thompson*, 124 Fla. 494 (1936); *Persons v. Pelum*, 135 So. 878 (Fla. 1931); FLORIDA REAL PROPERTY SALES TRANSACTIONS § 7.5.B.1 (Fla. Bar CLE 11th ed. 2023).

Comment: A minor's capacity to receive and hold title to real estate, whether in an individual capacity or in a fiduciary capacity as trustee, has not been questioned by the appellate courts of Florida.

In Florida's guardianship statutes, the term "Minor" is defined as a person under 18 years of age whose disabilities have not been removed by marriage or otherwise. Fla. Stat. § 744.102(13) (2024). See also, Fla. Stat. § 743.07(1) (2024). Chapter 743 of the Florida Statutes also includes other ways the disabilities of nonage can be removed.

Legal disability of nonage for those persons younger than the age of 18 years old is removed upon marriage, and once removed is not reimposed by divorce or death of the spouse before reaching the age of majority. Fla. Stat. § 743.01 (2024). Problem 1 above concerns the removal of the legal disability of nonage upon marriage.

A minor's sale of real property transmits the title, and is voidable only, but not void. A minor may, at any time within seven years after reaching majority, elect to rescind the transaction, and after seven years the grantor would no longer be permitted to disaffirm the deed. If the deed is disaffirmed, a return of the consideration paid for the deed is not necessary if the consideration has since been spent or used up. See *Putnal*, 61 Fla. at 720.

Upon reaching majority, one can ratify a deed by express declaration or by conduct showing a clear intent to ratify. "…[I]ntent is one of the essentials of ratification. Intent must also be supported by some act amounting to ratification with full knowledge of its consequences." *Lee*, 124 Fla. at 501.

While the minor may have the personal right to disaffirm conveyances made during his minority, the minor does not have the right to disaffirm conveyances made while the minor was acting in a fiduciary capacity as trustee at the direction of, and for the benefit of, the beneficial owner of the trust. *Persons*, 135 So. at 878-879 (stating, "…It is apparently well settled that the pleading of infancy to repudiate any act is a personal privilege… Where a minor, acting as trustee for another, takes the legal title to property and at the direction of the beneficial owner and for the benefit of the beneficial owner makes a conveyance of the property so held, he cannot afterwards avoid the validity of the conveyance by disaffirming the same on a plea of infancy." (Citations omitted)). The minor in a fiduciary capacity as trustee does not otherwise have the capacity to convey title to real property.

Also, a minor is prohibited from acting as a personal representative. Fla. Stat. § 733.303(1)(d) (2024).

Problem 2 above concerns a natural guardian's lack of authority to convey a minor's interests in real property received by the minor in excess of the aggregate amount of $15,000. Fla. Stat § 744.301(2)(c) (2024) allows the parents as natural guardians on behalf of any of their minor children to collect, receive, manage, and dispose of real property owned by a minor only when the property is distributed from an estate or trust and when the amounts received in the aggregate do not exceed $15,000. Otherwise, if a minor receives property in excess of $15,000 in the aggregate, the parents would only acquire authority to deal with the child's property upon appointment as the guardian of the property by a probate judge. FLORIDA REAL PROPERTY SALES TRANSACTIONS § 7.5.B.1 (Fla. Bar CLE 11th ed. 2023). The term "aggregate" is not specifically defined in Chapter 744 of the Florida Statutes. As such, in appropriate circumstances a practitioner may consider obtaining a court order to confirm the value of the "aggregate" amount received by the minor.

The natural guardian(s) may not, without court order, use the ward's property for the guardian's benefit or to satisfy the guardian's support obligation to the ward. Fla. Stat. § 744.301(4) (2024).

Problem 3 above is an example of when a custodian of a minor can convey a minor's interest under The Florida Uniform Transfers to Minors Act. On October 1, 1985, Florida enacted The Florida Uniform Transfers to Minors Act, Fla. Stat. §§ 710.101-.126 (2024) ("Act"). A minor under the Act is an individual who has not attained the age of 21 years. Fla. Stat. § 710.102(12) (2024). The Act provides that custodial property is created and a transfer is made whenever an interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words, "as custodian for (name of minor) under the Florida Uniform Transfers to Minors Act." Fla. Stat. § 710.111(1)(e) (2024).

The Act provides that the transfer is irrevocable and the custodial property is indefeasibly vested in the minor, but the custodian has all the powers, duties, and authority provided in the Act. Fla. Stat. § 710.113(2) (2024). A custodian acting in a custodial capacity has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but the powers must be exercised in that capacity only. Fla. Stat. § 710.115(1) (2024). However, a minor and the minor's legal representative have no power, duty or authority with respect to the custodial property except as provided by the Act. Fla. Stat. § 710.113(2) (2024).

The Act states who may create custodial property, which includes persons, settlors, personal representatives, trustees and conservators, among others stated in the Act, and how a transfer to create custodial property is made. Fla. Stat. § 710.111 (2024).

Regarding termination of the custodianship, the Act states the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

a) The minor's attainment of 21 years of age with respect to custodial property transferred under section 710.105 or section 710.106 of the Florida Statutes. However, a transferor can, with respect to such custodial property, create the custodianship so that it terminates when the minor attains 25 years of age (Fla. Stat. § 710.123(1)(a) (2024)).

(b) The minor's attainment of 18 years of age with respect to custodial property transferred under section 710.107 or section 710.108 of the Florida Statutes (Fla. Stat. § 710.123(1)(b) (2024)); or

(c) The minor's death (Fla. Stat. § 710.123(1)(c) (2024)).

STANDARD 3.1-6

AUTHORITY TO HOLD AND CONVEY TITLE – CONVEYANCES TO DECEASED GRANTEES

STANDARD: A CONVEYANCE TO A NATURAL PERSON IS ONLY VALID IF THE GRANTEE IS ALIVE AT THE TIME OF DELIVERY OF THE INSTRUMENT OF CONVEYANCE.

Problem: Intending to make a gift, James Doe, the owner of Blackacre, executed a deed naming his brother, John Doe, as the grantee. John Doe passed away before James could deliver the deed to John so James Doe instead delivered the deed to Mary Doe, John's daughter and sole heir. Is Mary Doe vested with marketable title?

Answer: No, because the deed was not delivered to the named grantee before he died.

Authorities & References: *Hutto v. Hutto*, 63 So. 914 (Fla. 1913).

Comment: In order for a conveyance to be valid, an individual grantee must be alive at the time of delivery. A deceased person is not a proper grantee on a deed, even if the deed is given to the person or persons who would have legal title had the deceased grantee died after accepting the conveyance. The court in *Hutto* acknowledged this rule. *Hutto*, 63 So. at 914. However, the opinion went on to say that if valuable consideration is paid by the grantee and the grantor retains that consideration, a court in equity will allow the deed to be reformed to identify as the actual grantee(s) the party or parties to whom title passed upon the death of the deceased grantee. *Id.*

For additional information regarding delivery and timing of delivery, see Title Standards 3.0 and 16.2.

STANDARD 3.2

DEED PURPORTING TO CORRECT PREVIOUS EFFECTIVE DEED

STANDARD: A GRANTOR WHO HAS CONVEYED LAND BY AN EFFECTIVE AND UNAMBIGUOUS DEED CANNOT AVOID THE EFFECT OF SUCH CONVEYANCE BY UNILATERALLY EXECUTING A NEW DEED MAKING A CHANGE IN THE CONVEYANCE AS TO THE LAND PREVIOUSLY CONVEYED, EVEN THOUGH THE LATTER DEED PURPORTS TO CORRECT OR MODIFY THE FORMER.

Problem 1: John Doe, the record owner of Blackacre, conveyed the west half of Blackacre to Sally Smith. Doe later conveyed the east half of Blackacre to Smith by a deed containing a recital that it was executed to correct an erroneous description in the previous deed. Doe then executed a deed of the west half of Blackacre to Simon Grant. At the time of the conveyance to Grant, did Grant acquire marketable title to the west half of Blackacre?

Answer: No. The later conveyance from Doe to Smith of the east half of Blackacre did not nullify the former conveyance of the west half of Blackacre. Grant must obtain a conveyance of the west half of Blackacre from Smith.

Problem 2: John Doe, the record owner of Blackacre, conveyed the west half of Blackacre to Sally Smith. In the prior conveyance of Blackacre to Doe, the legal description also included Blackacre Orange Grove. Doe neglected to include the orange grove in the conveyance to Smith. After execution and delivery of the deed, Smith inserts the missing orange grove in the legal description and rerecords the deed. Did Smith acquire marketable title to the orange grove?

Answer: No. Doe remained in title to the orange grove. Marketable title can only be conveyed to Smith by a deed with a corrected legal description that is executed by Doe.

Authorities & References: *Kirkpatrick v. Ault*, 177 Kan. 552, 280 P. 2d 637 (1955); *Hilterbrand v. Carter*, 27 P. 3d 1086 (Or. Ct. App. 2001); *Connelly v. Smith*, 97 So. 2d 865 (Fla. 3d DCA 1957), *cert. den.* 101 So. 2d 811 (Fla. 1958); 26A C.J.S. *Deeds* §§ 31, 174 (2001); FUND TN 10.03.03.

Comments: Problem 1 is designed to point out that marketability of title cannot be achieved as to land previously conveyed by the unilateral action of the grantor. Even as to interests in land that remained in the control of the grantor and were later conveyed by a corrective deed, the grantee must accept the interest conveyed. However, recordation of a corrective deed creates a presumption of delivery.

Problem 2 illustrates that a grantee cannot unilaterally correct a deed deemed sufficient. Voluntary additions to the description after the execution and delivery has no effect.

When the property described in a corrective deed remains in the control of the grantors, a practitioner should obtain a corrective deed from the original grantor that has been re-executed and reacknowledged in order to correct errors in the legal description.

Where the rights of third parties are not involved, the grantee's acceptance of the corrective deed may supplement the effect of the prior deed, as between the parties. As to problem 1, the passage of time and application of the Marketable Record Title

Act could operate to vest marketable title as to the west half of Blackacre to Grant. See Title Standard 17.1.

STANDARD 3.3

AFFIDAVIT

STANDARD: WHENEVER POSSIBLE AND IN CONFORMITY WITH STANDARDS PROMULGATED HERE, THE EXAMINER SHOULD ACCEPT AND RELY ON AN AFFIDAVIT WHICH STATES SUFFICIENT FACTS TO NEGATE A POSSIBLE DEFECT IN AN OTHERWISE MARKETABLE TITLE.

Problem 1: Blackacre was conveyed to John Doe. Later a conveyance appears from J. Doe. May an affidavit that grantee and grantor are one and the same person be accepted as true?

Answer: Yes.

Problem 2: Blackacre was conveyed to John Doe. A judgment appears against J. Doe. May an affidavit to the effect that J. Doe and John Doe are not the same person be accepted?

Answer: Yes.

Problem 3: Blackacre was owned by John Doe and Jane Doe, his wife, as an estate by the entireties. There is a conveyance by Jane Doe, a widow, and a death certificate of J. Doe appears of record. May an affidavit be accepted that J. Doe and John Doe are one and the same person?

Answer: Yes.

Problem 4: Blackacre was conveyed to Simon Grant. Simon Grant then conveyed to John Doe. There was no recitation of the marital status of Simon Grant on the deed of conveyance. Should an affidavit from a person with knowledge of the facts, stating that Simon Grant was a single man at the time of the conveyance, be accepted?

Answer: Yes.

Problem 5: Blackacre was conveyed by John Doe to Jimmy Doe by deed executed on October 1, 2019. John Doe died on October 16, 2019. Later, the deed conveying Blackacre was recorded on November 8, 2019. Raven Roe, who was the estate planning attorney for John Doe, prepared the deed and witnessed the execution and delivery of the deed from John to Jimmy. In connection with the sale of the property by Jimmy, Raven Roe executed and recorded an affidavit stating she witnessed the execution and delivery of the deed by John Doe. Should Raven Roe's affidavit be accepted?

Answer: Yes.

Problem 6: Richard Roe owned Lot 6, Block 5 of Country Club Estates. However, in the deed executed by Richard Roe which purported to convey the property to Mary Maple, the legal description read "Lot 5, Block 6 of Country Club Estates." Lot 5 is owned by John Doe. After discovering his error, Richard executes and records an affidavit that purports to identify the scrivener's error and provides the correct legal description for the property conveyed to Mary. The affidavit does not substantively comply with F.S. 689.041. Should Richard's affidavit be accepted to correct the legal description?

Answer: No.

Authorities
& References: *Felt v. Morse*, 80 Fla. 154, 85 So. 656 (1920); Annot., 7 A.L.R. 1166, 1171 (1920); BASYE, CLEARING LAND TITLES §§ 31-45 (2d ed. 1970); I FLORIDA REAL PROPERTY PRACTICE § 9.31 (Fla. Bar CLE 2d ed. 1971); FUND TN 10.02.02, 10.04.07, 18.02.01, & 20.02.05; Title Standard 16.2; F.S. 689.041 (2024).

Comment: With respect to continuous marriage affidavits, see Title Standard 6.6.

Generally, an affidavit should contain a recitation of facts that establish a basis for the affiant's knowledge of the facts. Before relying upon an affidavit, a practitioner should evaluate whether the facts are consistent with other facts known to exist and are otherwise credible. Because affidavits should contain sworn statements, a jurat should be used by the notary taking the sworn statement.

As illustrated in Title Standard 16.2, a delay in recording does not affect the validity of the deed. However, in instances where the grantor died or became incapacitated prior to the time of recording, proof of delivery of the deed may be established by affidavit provided that the affiant establishes personal knowledge concerning the circumstances of the execution and delivery of the deed. This concept is illustrated in Problem 5.

Problem 6 illustrates how an affidavit should not be used to address an actual title defect such as an inaccurate legal description, incorrect grantor or grantee. Section 689.041, Florida Statutes was enacted in 2020. Effective July 1, 2020, the statute permits the use of a Curative Notice under certain circumstances to correct an erroneous legal description. The use of a Curative Notice is limited by the statute to specific types of scrivener's errors as defined by F.S. 689.041 (2024).

STANDARD 3.4

ACKNOWLEDGMENT — NECESSITY FOR SEAL AND EXCEPTIONS

STANDARD: TO BE VALID AND ENTITLE THE INSTRUMENT TO WHICH IT IS APPENDED TO BE RECORDED, A CERTIFICATE OF ACKNOWLEDGMENT MUST HAVE THE SEAL OF THE INDIVIDUAL TAKING THE ACKNOWLEDGMENT AFFIXED UNLESS OTHERWISE AUTHORIZED BY LAW.

Problem 1: A certificate of acknowledgment attached to a deed was taken by a Florida notary public (or other authorized official), but a notarial seal was not affixed. The clerk accepted the deed for recordation. Was the deed entitled to recordation?

Answer: No. A certificate of acknowledgment taken by a notary public within the state of Florida requires the notary's seal.

Problem 2: Same facts as in Problem 1 except that the Florida notary public had obtained and attached a certificate of notarial authority from the Secretary of State, as provided in section 117.03, F.S. The clerk overlooked the omission of the notary's seal and recorded the deed. Was the deed entitled to recordation?

Answer: No. A certificate of notarial authority by the Florida Secretary of State is not recognized as a substitute for a Florida notary public's seal affixed on a certificate of acknowledgment taken in Florida.

Problem 3: A certificate of acknowledgment attached to a deed dated July 15, 2025, was taken by a South Dakota notary public who did not affix his seal. The acknowledgment attached to the deed stated, "I am a notary public of the state of South Dakota, and my commission expires on July 1, 2027." The clerk accepted the deed for recordation. Was the deed entitled to recordation?

Answer: Yes. The recited statement authority by notary public authority taken outside of the state of Florida, but within the United States, is acceptable as a substitute for a seal affixed on a certificate of acknowledgment.

Problem 4: A certificate of acknowledgment attached to a deed was taken by a notary public of a foreign country but no seal was affixed. The clerk accepted the deed for recordation. Was the deed entitled to recordation?

Answer: No. A certificate of acknowledgment taken by a notary public outside of the United States requires the notary's seal.

Authorities & References*:* Fla. Stat. §§ 95.231, 117.05(3)(a), 668.50(11)(a), 695.03 (2025); *Matter of Barrido*, 69 B.R. 316, 317 (Bankr. M.D. Fla. 1987); *Florida Nat'l Bank & Trust Co. v. Hickey*, 263 So. 2d 269, 273 (Fla. 3d DCA 1972); FUND TN 1.01.01, 1.03.01, 1.04.01, 1.04.02.

Comment: Problems 1, 2, and 4 demonstrate that unless otherwise authorized by law, a certificate of acknowledgment requires the seal of the officer taking the acknowledgment. Fla. Stat. § 695.03 (2025).

Problem 3 provides an example of a statutory exception for acknowledgments taken outside of the state of Florida, but within the United States. For such acknowledgments it is sufficient for the notary public to type, print, or write by hand on the instrument, "I am a Notary Public of the State of (state), and my commission expires on (date)" in lieu of the notary's seal. Fla. Stat. § 695.03(2) (2025).

But see *James v. Gollnick*, 100 Fla. 829, 835, 130 So. 450, 452 (Fla. 1930) (the lack of a notary's seal may be cured seven years after recordation by Fla. Stat. § 694.08). Also, Fla. Stat. § 95.231 (2025) cures the lack of seals, witnesses, defects in, failure of, and absence of an acknowledgment once the instrument in question has been recorded in the public records for at least five years. These curative statutes may only be applied in the absence of fraud, adverse possession, or pending litigation. See FUND TN 1.03.01 and Title Standard 3.9. If sufficient time has not passed for the application of these curative statutes, corrective action may be required to render title marketable.

Exceptions to this Standard are those acknowledgments of members of the United States Armed Forces and their spouses taken in accordance with Fla. Stat. § 695.031 (2025). Acknowledgments made by members of the Armed Forces and their spouses may be taken anywhere in the world and failure to state the place of execution of acknowledgment and lack of a seal do not render these acknowledgments invalid. See FUND TN 1.01.01.

A Florida notary's seal must be a rubber stamp. Fla. Stat. § 117.05(3)(a) (2025). Under the Uniform Electronic Signature Act, neither a rubber stamp nor an impression seal is required for an electronic notarization. Fla. Stat. § 668.50(11)(a) (2025); see FUND TN 1.02.07.

Acknowledgments or proof made within the state of Florida, outside of the state of Florida but within the United States, or outside of the United States may be taken by an individual as provided in Fla. Stat. § 695.03(1)-(3) (2025).

Requirements pertaining to acknowledgments are further discussed in Title Standard 3.0. See Fla. Stat. §§ 95.231(1), 694.08(1) (2025) and Comments to Title Standard 3.0 concerning questions of marketability arising when a recorded deed is not properly acknowledged.

STANDARD 3.5

ACKNOWLEDGMENT – FLORIDA

REMOTE ONLINE NOTARIZATION

STANDARD: TO BE VALID AND ENTITLE THE INSTRUMENT TO WHICH IT IS APPENDED TO BE RECORDED, A CERTIFICATE OF ACKNOWLEDGMENT TAKEN REMOTELY MUST BE TAKEN BY A REGISTERED FLORIDA REMOTE ONLINE NOTARY PUBLIC ("RON") WHO IS LOCATED WITHIN THE STATE OF FLORIDA WITH THE ASSISTANCE OF A FLORIDA RON SERVICE PROVIDER OR BY A REGISTERED RON OF ANOTHER JURISDICTION AS AUTHORIZED BY THE LAW OF THAT JURISDICTION.

Problem 1: A certificate of acknowledgment attached to a deed was duly taken by a Florida notary. The certificate of acknowledgment states the acknowledgment was taken in Florida and was an online notarization. The Florida notary was not a Florida RON and did not act with the assistance of a RON service provider. The clerk accepted the deed for recordation. Was this deed entitled to recordation?

Answer: No. A valid online notarization performed by a Florida notary may only be performed by a Florida RON registered with the Florida Secretary of State who acts with the assistance of a RON service provider.

Problem 2: A certificate of acknowledgment attached to a deed was duly taken by a Florida RON. The certificate of acknowledgment states the acknowledgment was taken in New York and the clerk accepted the deed for recordation. Was the deed entitled to recordation?

Answer: No. A Florida RON is authorized to perform online notarizations only when the notary is physically located in the state of Florida.

Problem 3: Same facts as Problem 2 except that the certificate of acknowledgment states the acknowledgment was taken in Florida and the grantor whose acknowledgment was taken was located in Italy when the acknowledgment was taken. The clerk accepted the deed for recordation. Was The clerk accepted the deed for recordation. Was the deed entitled to recordation?

Answer: Yes. The grantor is not required to be present in Florida during the Florida RON's notarial act.

Authorities & References: Fla. Stat. §§ 117.201, 117.209, 117.265 (2025); FUND TN 1.08.01.

Comment: Problems 1 and 2 illustrate that an instrument may be entitled to recordation when a certificate of acknowledgment is taken by a Florida RON physically located in Florida when the acknowledgment is taken, and the RON acted with the assistance of a RON service provider.

As demonstrated in Problem 3, the grantor need not be physically located in Florida at the time of notarization. Fla. Stat. § 117.209(3) (2025). Different rules apply concerning the location of witnesses during the remote notarial act.

See Fla. Stat. § 117.285 (2025). Mandatory registration for Florida RONs may be verified with the Florida Secretary of State. A Florida RON may perform notarial acts only with the assistance of a statutorily approved RON service provider. Fla. Stat. § 117.201(14) (2025). A RON service provider provides audio-video communication technology and related processes, services, software, data storage, or other services facilitating RONs in performing online notarizations in compliance with Florida law.

When performing online notarization, a Florida RON is required to confirm the identity of the grantor and witnesses appearing online as provided in Fla. Stat. §§ 117.265, 117.285 (2025). The identity of each grantor must be confirmed by the RON's personal knowledge of the grantor or a combination of all of the following: presentation of a government-issued identification, credential analysis of the same, and identity proofing in the form of knowledge-based authentication or a method of identity proofing that conforms to Florida Statutes Chapter 117. The only generally accepted method of identity proofing for Florida RONs at the time of publication of this chapter is knowledge-based authentication since there exists no reliable data sources for verification of biometric data. Each notarial act must include the electronic signature and seal to the electronic notarial certificate of an electronic record so that independent verification may be made using tamper-evident technology making subsequent change or modification to the electronic record evident. Fla. Stat. § 117.255(1)(c) (2025). Because knowledge-based authentication may be challenging for certain grantors, another method of acknowledgment may be required.

Several other states within the United States authorize the registration and use of online notaries. An instrument that had been recorded in reliance upon a notarial act made by a registered online notary of a state other than Florida may be relied upon provided the online notary and the act were made in compliance with the law of that jurisdiction. The affixing of the official seal conclusively establishes that the acknowledgment or proof was taken, administered, or made in full compliance with the laws of Florida or another state. Further, such acts are validated and upon recording may not be denied having provided constructive notice unless there is a challenge to the validity or enforceability of an instrument or electronic record based upon something unrelated to the notarial act or constructive notice provided by recording. For example, for constructive notice to not be effective by recording, a challenge would need to be based upon fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, or unconscionability. Fla. Stat. § 695.03(4) (2025).

See Fla. Stat. § 95.231(1), 694.08(1) (2025) and Comments to Title Standard 3.0 concerning questions of marketability arising when a recorded deed is not properly acknowledged.

STANDARD 3.6

ERRONEOUS, INCONSISTENT, IMPOSSIBLE OR OMITTED DATE

STANDARD: THE FACT THAT AN INSTRUMENT SUCH AS A DEED OR MORTGAGE IS UNDATED, BEARS A DATE DIFFERENT FROM THE DATE OF THE ACKNOWLEDGMENT, OR BEARS AN IMPOSSIBLE DATE, DOES NOT AFFECT THE VALIDITY OF THE INSTRUMENT.

Problem 1: John Doe's deed to Blackacre conveying it to Rachel Roe is dated June 1, 1998. The acknowledgment is dated May 31, 1998. Does the inconsistency in the dates invalidate the deed?

Answer: No.

Problem 2: A deed to Blackacre from John Doe to Rachel Roe bears no date. Does the lack of the date invalidate the deed?

Answer: No.

Problem 3: A deed to Blackacre from John Doe to Rachel Roe is dated April 31, 1998, an impossible date. Does the impossible date invalidate the deed?

Answer: No.

Authorities & References: *Douglas v. Tax Equities, Inc.*, 144 Fla. 791, 797, 198 So. 5, 8 (Fla. 1940), *reh'g den.* 144 Fla. 801, 198 So. 578 (Fla. 1940); *Moody v. Hamilton*, 22 Fla. 298, 301 (Fla. 1886); *In re Henry v. First Indiana Bank*, 200 B.R. 59, 64 (Bankr. M.D. Fla. 1996); 26A C.J.S. *Deeds* § 37 (2022); 19 Fla. Jur. 2d *Deeds* § 12 (2022); Paul Game, *Examination of Abstracts,* 6 U. FLA. L. REV. 77, 80 (1953); FUND TN 1.02.02.

Comment: The lack of a date, or inclusion of an erroneous, inconsistent or impossible date does not invalidate the instrument. See *Douglas*, 144 Fla. at 797 ("It has been held that a deed takes effect from the date of delivery and is good without a date or with an impossible date, where the real date the deed was given or delivered can be proved."); *Moody*, 22 Fla. at 301 ("The fact that a deed contains an incorrect date does not vitiate it. The presumption…is that the deed was delivered and took effect on the day of its date …. The paper was offered in its entirety and the acknowledgment overcame the presumption alluded to. It is immaterial whether a deed has any date, and an impossible date would not vitiate it."); 26A C.J.S. *Deeds* § 37 (2022) (the validity of a conveyance is not affected by the absence of a date or by a false or impossible date); 19 Fla. Jur. 2d *Deeds* § 12 (2022) ("The date of a deed, containing the day, month, and year of its execution, is one of the formal parts of the instrument, but it is not essential to the deed's validity. A deed takes effect from the date of delivery and is good without a date or with an impossible date where the real date when the deed was given or delivered can be proved. The fact that a deed contains an incorrect date thus does not vitiate it."); Paul Game, *Examination of Abstracts*, 6 U. FLA. L. REV. 77, 80 (1953) ("A question may arise in the mind of the examiner when the date of the deed is subsequent to that of the acknowledgment. This does not invalidate either the deed or the acknowledgment; it is presumed that the date of the deed is in error."). *In re Henry*, 200 B.R. at 64 (the discrepancy between the date of the original mortgage notarization and the modification of the mortgage's execution date is a technical error which does not invalidate the mortgage).

STANDARD 3.7

AFTER-ACQUIRED TITLE

STANDARD: A WARRANTY DEED AUTOMATICALLY CONVEYS AFTER-ACQUIRED TITLE TO THE GRANTEE.

Problem 1: In 2010, before receiving title to Blackacre, John Doe gave a warranty deed to Mary Bear conveying Blackacre. In 2012, Simon Grant conveyed Blackacre to Doe. Does Bear have marketable title to Blackacre?

Answer: Yes.

Problem 2: Same facts as Problem 1, except John Doe gave a quit claim deed to Mary Bear. Does Bear have marketable title to Blackacre?

Answer: No.

Authorities & References: *Nottingham v. Denison*, 63 So. 2d 269 (Fla. 1953) (warranty deed conveys after-acquired title); 1 BOYER, FLORIDA REAL ESTATE TRANSACTIONS §15.05(2) (Bender 10th ed. 2021); FUND TN 10.03.01.

Comment: Problem 1 illustrates that when a person conveys and warrants land in which he has no interest at the time, but afterwards acquires title, he is estopped to deny the conveyance. *Tucker v. Cole*, 3 So. 2d 875 (Fla. 1941); *Daniell v. Sherrill*, 48 So. 2d 736 (Fla. 1950).

As demonstrated in Problem 2, a quit claim deed does not convey after-acquired title as the quit claim deed conveys only whatever title the grantor holds at the time of the conveyance. However, a special warranty deed has been held sufficient to convey after-acquired title. *Goldtrap v. Bryan, 77* So. 2d 446 (Fla. 1955); *June Sand Co. v. Devon Corporation*, 23 So. 2d 621 (Fla. 1945).

The title of a mortgagor acquired after the execution of a mortgage may inure to the benefit of the mortgagee if the mortgage contains warranties of title. See, *Hillman v. McCutchen*, 166 So. 2d 611, 612 (Fla. 3d DCA), *cert. denied*, 171 So. 2d 391 (Fla. 1964) ("where a mortgage contains a full covenant of warranty of title, then any title acquired by the mortgagor after execution of the mortgage inures to the benefit of the mortgagee"). See Title Standard 9.4.

However, a deed or mortgage executed and recorded before a grantor acquires title to the property will not be in its chain of title. Therefore, it may not impart constructive notice to bona fide purchasers and encumbrancers and may not be superior to their subsequently recorded interests. The practitioner should obtain a certified copy of the deed and/or mortgage and re-record the instrument(s) so that it/they appear(s) in logical order and the apparent break in the chain of title is repaired.

STANDARD 3.8

CONVEYANCE WITHOUT CONSIDERATION

[Consolidated with Title Standard 3.0 MARKETABILITY OF CONVEYANCES]

STANDARD 3.9

CERTAIN DEFECTS IN DEEDS CURED

STANDARD: A DEFECTIVE OR MISSING ACKNOWLEDGMENT OR A LACK OF WITNESSES IN A CONVEYANCE OF REAL PROPERTY OR IN A RECORDED POWER OF ATTORNEY MAY BE CURED AFTER THE STATUTORY PERIOD HAS RUN.

Problem 1: A deed recorded in 2016 from John Doe to Richard Roe lacked two witnesses. In the absence of fraud, adverse possession or pending litigation may the deed be treated as an effective conveyance in 2022?

Answer: Yes. The defect of missing witnesses was cured after being recorded five years pursuant to section 95.231(1) of the Florida Statutes.

Problem 2: A deed recorded in 2016 from John Doe to Richard Roe lacked a signature from the notary public. In the absence of fraud, adverse possession or pending litigation may the deed be treated as an effective conveyance in 2022?

Answer: Yes. The defective acknowledgement was cured after being recorded five years pursuant to section 95.231(1) of the Florida Statutes.

Problem 3: The record reflects a 2016 deed from John Doe and Richard Roe to Simon Grant contained an acknowledgment of John Doe's signature but not Richard Roe's. In the absence of fraud, adverse possession or pending litigation may the deed be treated as an effective conveyance by Richard Roe in 2022?

Answer: Yes. The missing acknowledgment of Richard Roe's signature was cured after being recorded five years pursuant to section 95.231(1) of the Florida Statutes.

Problem 4: The record reflects a 2016 deed from John Doe as attorney-in-fact for Edith Edwards to Richard Roe. A previously recorded power of attorney for Edith Edwards as principal that designated John Doe as her attorney-in-fact lacked two witnesses. In the absence of fraud, adverse possession or pending litigation may the deed be treated as an effective conveyance in 2022?

Answer: Yes. The defect of missing witnesses in the recorded power of attorney for Edith Edwards was cured after being recorded five years pursuant to section 95.231(1) of the Florida Statutes.

Authorities & References: Fla. Stat. §§ 95.231(1), 694.08(1) (2025); FUND TN 1.02.01, 1.03.01, 1.05.01.

Comment: Problems 1, 2 and 3 above illustrate that where the grantor has conveyed in an individual capacity, section 95.231(1) of the Florida Statutes cures the lack of witnesses, lack of signature from a notary public or a defective or missing acknowledgement after five years from date of recording in the absence of fraud, adverse possession or pending litigation. Where the grantor conveyed in an official or representative capacity, section 95.231(1) of the Florida Statutes may not apply. However, section 694.08(1) of the Florida Statutes cures the same defects after seven years from date of recording where the defective deed was executed in an official or representative capacity and where the grantee, in a subsequently recorded deed, conveyed with evident intent to do so.

Also, the title examiner may resort to a review of the whole instrument to determine the sufficiency of the acknowledgment. *House of Lyons, Inc., et al. v. Marcus*, 72 So. 2d 34, 35 (Fla. 1954) ("…by the rule in effect in Florida, the whole of the instrument acknowledged may be resorted to for support of the acknowledgment…"); *Edenfield v. Wingard*, 89 So. 2d 776, 778 (Fla. 1956) ("…the whole of the instrument acknowledged may be resorted to for support of the acknowledgment. This is a fundamental principle of construction. Moreover…we pointed out the policy of the law to uphold certificates of acknowledgment wherever possible…"); *Florida Nat. Bank and Trust Co., et al. v. Hickey, et al.*, 263 So. 2d 269, 273 (Fla. 3d DCA, 1972) ("…It is well settled that the whole of the instrument may be resorted to [for] support [of] an acknowledgment…"); FUND TN 1.02.06. Deeds should be examined on a case-by-case basis to determine the sufficiency of the acknowledgments. For instance, the omission of the grantor's name in the acknowledgment where the omission can be ascertained from other sources (as from the face of the instrument or other parts of the certificate, and if the omission does not leave uncertain the identity of the acknowledger as the person executing the instrument), proof of identity of the grantor, deficient statement of venue and the failure to print the notary's name may be immaterial defects that could be overcome through examination of the entire deed. Fla. Stat. § 695.06 (2025); FLORIDA REAL PROPERTY TITLE EXAMINATION AND INSURANCE § 3.4.D.3.m (Fla. Bar CLE 11th ed. 2023); FUND TN 1.02.05, 1.02.09.

See Title Standard 4.1 concerning the sufficiency of an acknowledgment of a corporate instrument executed by the proper officer(s) whose capacity is recited in the instrument, but not in the acknowledgment.