

PROPOSED AMENDMENTS TO 2002 SOUTH DAKOTA TITLE STANDARDS

APPENDIX TO CHAPTER 43-30 STATE BAR OF SOUTH DAKOTA ~~2002-2022~~ TITLE STANDARDS

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INTRODUCTION

The State Bar of South Dakota Title Standards are the work of the Real Property, Probate and Trust Section's Title Standards Committee. The Standards themselves are not the authority. Rather, they are in some sense a restatement of the law designed to aid the practitioner in determining the current status of practice in a particular area.

The Standards are based on existing South Dakota statutes and case law from South Dakota's courts and other relevant jurisdictions. The committee members' experience with the relevant authorities is crucial to drafting Standards.

The 2002 Standards ~~are-were~~ in part based on the Model Title Standards, existing South Dakota Title Standards and various Title Standards from other jurisdictions, predominantly North Dakota and Nebraska. The Title Standards Committee has discovered that to be most useful the Title Standards must keep pace with the ever-evolving landscape of the law. The ideal way to achieve this goal is through a standing Title Standards Committee charged with an on-going review of statutory and case law whose members are familiar with the dynamics of practice, enabling them to draft and revise Standards as necessary. In 2021, the Title Standards Committee was tasked with reviewing and updating the 2002 Standards. It is anticipated that additional review and updates will be needed going forward.

CITATION

These Title Standards may be cited as 2002-2022 South Dakota Title Standards referencing the appropriate Standard number. The citation may be abbreviated 2002-2022 SDTS.

A-01. Examining attorney's attitude

The purpose of the examination of title and of objections, if any, shall be to secure for the examiner's client a title which is in fact marketable and which is shown by the record to be marketable, subject to no other encumbrances than those expressly provided for by the client's contract. Objections and requirements should be made only when the irregularities or defects reasonably can be expected to expose the purchaser or lender to the hazard of adverse claims or litigation.

When an examiner finds a situation which he believes creates a questions as to marketable title and has knowledge that another attorney handled the questionable proceeding or has passed the title as marketable, the examining attorney before writing an opinion, should communicate, if feasible, with the other attorney and afford an opportunity for discussion.

A-02. Abstracter's certificate, liability on

Under SDCL 36-13-15, the conditions of an abstracter's bond are for the payment by such abstracter of all damages which may be sustained by or accrue to any person (whether the original purchaser, owner or holder of the abstract) by reason of error deficiency, mistake in any abstract or certificate of title. In view of this statutory provision, such certificate may be construed as extending the protection and liability to the public generally.

A-03. Recertification

The examiner should accept, without recertification, prior entries in an abstract of title, provided the same were previously certified to by a qualified abstracter.

1-01. Tribal lands

Any transaction affecting Indian trust land is subject to the approval of the Secretary of the Interior, or as otherwise prescribed by federal statute, and any transaction affecting Indian tribal land is subject to the consent of the tribe, or as otherwise provided by the tribe's constitution and federal statute.

2-01. Contracts for deed--deed to vendee

Where there is a contract for deed in favor of A and later a deed is given to A and another

party or parties, a title examiner should treat the deed as creating the estate as indicated in the deed.

2-02. Contract for deed--merger

A deed executed in pursuance of a contract for deed supersedes and merges all prior negotiations or contracts relating to it, provided there is no fraud or mistake or collateral contractual provisions or agreements which are not intended to be merged in the deed.

2-03. Contract for deed--conveyances of interests

The vendor and vendee under an executory contract for deed each have an interest in the real property which is capable of conveyance, and transfers of any interest must meet the statutory requisites, including words of conveyance.

2-04. Contract for deed--transfers by vendor

A transfer by a vendor of an interest in the real property subject to a contract for deed creates an interest in the real estate in the vendee. If the transfer is in the form of a deed to the real estate, no further conveyance from the vendor is required to complete the chain of title.

2-05. Contract for deed--vendee's interest

A vendee's interest in the real property subject to a contract for deed is an interest to which a judgment lien will attach by operation of law before fee title is conveyed to the vendee. The interest may be mortgaged or levied upon.

2-06. Contract for deed--effect on joint tenancy

A contract for deed for the sale of real property held in joint tenancy does not have the effect of dissolving the joint tenancy relationship of the vendors if the contract for deed is executed by all the joint tenants, unless otherwise specifically provided in the instrument.

2-07. Contract for deed--cancellation

When the record shows that a contract for deed has been cancelled by action, a title examiner need only require the recording of a certified copy of the judgment, which includes reference to the date the redemption period, if any, expires, and the recording of an affidavit or other document establishing non-redemption.

2-08. Contract for deed--deeds held in escrow

A deed in performance of a contract for deed which has been executed and held in escrow pending performance of the contract, has been conditionally delivered to the grantee and, upon recording, is deemed effective as of the date of its execution.

3-01. Agricultural/commercial leases – limitations on lease term

No lease of agricultural land for longer period than twenty years is valid, and no lease of any town or city lot for a longer period than ninety-nine years is valid. An owner of a life estate cannot create a lease which will extend beyond the life estate holder's life.

3-02. Leases--notice of renewal

In the absence of notice of renewal from possession, record, or otherwise, a title examiner may disregard a recorded lease when the term as expressed in said lease has expired. However, reference shall be made to the lease when its continuation or renewal is dependent upon a contingency that may have occurred, such as production on lands covered by an oil, gas or mineral lease.

4-01. Effect of judgment on joint tenancy property

The mere docketing of a judgment resulting in a judgment lien on the joint tenancy property of a debtor does not alone sever the joint tenancy.

4-02. Conveyances to two or more individuals--inclusion of business name

Property is acquired in the name of the partnership by a transfer to one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the

instrument transferring title.

4-03. Homestead rights--effect of partnership on

Homestead rights do not attach to the interests of a married partner in specific partnership property. A title examiner need not require any evidence of release, waiver or nonexistence of the marital rights of a partner's spouse.

4-04. Conveyances by partnership

A conveyance of property held in the partnership name made and signed by the individual partners and not in the partnership name conveys equitable title only and a new conveyance in the partnership name must be obtained.

4-05. Conveyances to and by partners

Any estate in real property may be acquired in the partnership name. Subject to a recorded statement of partnership authority, title so acquired can be conveyed only by an instrument executed in the partnership name by one or more partners of the partnership.

4-06. Conveyances by partnership--when proof of authority not required

In the absence of knowledge or notification to the contrary, no affirmative proof of authority need be required of a general partner apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership.

4-07. Conveyances of partnership interest after death of partner

After the death of a partner, the surviving partner or partners may convey real property owned by the partnership. After the death of the last surviving partner, the personal representative of the last surviving partner may convey the partnership property provided such conveyance is for partnership purpose.

4-08. Partnership--effect of dissolution or cessation of business

Absent a winding up of the partnership, dissolution or cessation of business as a partnership does not change the status of partnership property as an asset of the partnership.

4-09. Partnership--effect of judgments

A judgment against a partner does not constitute a lien on specific real property owned by the partnership.

4-10. Deed divests present title of all grantors

A deed in which all parties to the title join conveys and releases all title presently held by the grantors regardless of the nature or character of the interest or interests held by or vested in such grantors. Accordingly, for example, it is unnecessary to refer to the grantors as "joint tenants" if they happen to be such.

4-11. Partnership--duration presumed

A title examiner may presume that a partnership continues in existence in the absence of actual knowledge of the dissolution of the partnership.

5-01. Affidavit of marital status

Recitals as to the marital status of parties to the instrument, or as to the homestead status of the property, or as to the identity of parties named in instruments in the chain of title, in any conveyance or other instrument affecting title to real estate in this state, which has been, or hereafter shall be, recorded in the office of the register of deeds for the county in which the land is situated, or the record of the instrument, or a certified copy of the record, shall be prima facie evidence of the truth of such recitals.

When a conveyance has been recorded and no spouse has joined therein, evidence should be required that the grantor was unmarried at the time of the execution of the conveyance or if married, that the premises conveyed did not constitute the grantor's homestead and that neither the

grantor nor any member of the grantor's family reside thereon should be considered sufficient evidence.

The evidence may consist of an affidavit by any person, including the grantor or grantee or an affidavit pursuant to the Marketable Record Title Act, SDCL Ch. 43-30.

5-02. Indication of marital status

A recital in the body of a deed or in a certificate of acknowledgement, or both, that the grantor is single, a widow, a widower, unmarried or divorced, or that the grantors are husband and wife, may be relied upon as a sufficient indication of marital status without inquiry or further notice.

5-03. Recitation of marital status

If a deed fails to recite the marital status of the grantor or if a married grantor's spouse fails to join in the conveyance, then the deed is defective unless it is possible to determine from the record that the property is not the homestead of the grantor.

5-04. Failure to include marital status

If the description of the marital status of the grantor has been omitted from either the body of the instrument or the certificate of acknowledgment and if the instrument has existed of record for more than twenty years with no action commenced, then it is not necessary to correct the record in order to make the title marketable.

5-05. Recitals of record

Employment of factual recitals in conveyance is sound, liberal practice. In the absence of special circumstances creating suspicion, adequate recitals should be accepted and relied upon, for example, in overcoming an error in the given name, names or initials or a minor error in the surname of the person, as the same appears in a prior instrument.

5-06. Execution by spouse under power of attorney

A conveyance of homestead property executed by one spouse, individually, and as attorney-in-fact for the other spouse is sufficient if the power of attorney specifically authorizes conveyance of homestead property.

A conveyance of homestead property executed by a non-spousal attorney in fact for one or both spouses is sufficient.

5-07. Deed of homestead

A conveyance or encumbrance of a homestead by its owner, if married and both husband and wife are residents of this state, is valid if both husband and wife concur in and sign or execute such conveyance or encumbrance either by joint instrument or by separate instruments.

5-08. Rule of idem sonans

Differently spelled names are presumed to be the same when they sound alike or when their words cannot be distinguished easily or when common usage by corruption or abbreviation has made their pronunciation identical. This rule should be liberally applied.

5-09. Use or nonuse of middle names or initials

The use in one instrument and nonuse in another of a middle name or initial ordinarily does not create a question of identity affecting title, unless the examiner is otherwise put on inquiry.

5-10. Abbreviations

All customary and generally accepted abbreviations of first and middle names should be recognized as their equivalents.

5-11. Name variations

Name variations from that of the record owner appearing in mechanics' liens, easements,

licenses, rights of way or court documents dealing with divorce, probate and similar documents other than mortgages or deeds may be ignored.

5-12. Effect of prefix, suffix and descriptio personae

Prefixes such as Rev. and suffixes such as M.D. are descriptio personae forming no part of the name and may be disregarded; however, A "Senior" and A "Junior" and their abbreviations do have significance when both appear in connection with the same name in the chain of title.

5-13. Statement indicating identity

A recital such as "formerly known as" may be used in overcoming variations resulting from a change of name.

A recital such as "also known as" may be used in overcoming an error in the given name, names or initials, or a minor error in the surname of a person as the same appears in a prior instrument.

5-14. Variance in name of grantors

If the grantees in one instrument of conveyance are "John Smith and Mrs. John Smith," and the grantors in a succeeding instrument in the chain of title are "John Smith and Mary Smith," further evidence e.g. affidavit, recital, etc., should show that Mrs. John Smith is the same person as Mary Smith. The same conclusion should be reached if the grantees were "John Smith and Mary Smith," and the grantors in a succeeding instrument in the chain of title were "John Smith and Mrs. John Smith."

5-15. Variance between signature or body of deed and acknowledgment

Where the given name or names or the initials used in a grantor's signature on a deed vary from the name as it appears in the body of the deed, but the name as given in the certificate of acknowledgment agrees with either the signature or the name in the body of the deed, the certificate of acknowledgment should be accepted as providing adequate identification.

5-16. Deceased persons

A conveyance to a person who is deceased at the time of the conveyance is invalid.

5-17. Conveyance--fictitious persons

A conveyance is invalid if the named grantee is a mere fictitious person. If an existing person acquires title to real estate under an assumed or fictitious name, there are specific methods for establishing record identity of the person.

5-18. Powers of attorney

A conveyance or encumbrance executed by an attorney in fact in behalf of the principal must identify the principal in the body of the instrument. The attorney in fact must then sign the name of the principal and his or her own name as attorney in fact, although it is permissible to type the name of the principal.

5-19. Durable power of attorney

A durable power of attorney, which contains the words "this power of attorney is not affected by subsequent disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the subsequent disability of the principal and all acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal shall bind the principal and the principal's successors in interest as if the principal were competent and not disabled.

5-20. Grant of power of attorney

A power of attorney or certified copy thereof must be recorded to establish the authority of an attorney in fact to act on behalf of the principal. The power of attorney must include in its grant of authority the power to sell or convey if a deed is being executed; or the power to mortgage,

pledge or grant as security for loans if a mortgage is being executed. The power to sell or mortgage shall be presumed to include the authority to execute the documents related to consummating the transaction.

5-21. Recording power of attorney

For any deed or conveyance signed by a person under a Power of Attorney, evidence must be shown of record to be in effect on date of instrument.

5-22. Conveyances under authority of power of attorney

A general authority to convey shall grant to the attorney in fact named in the power of attorney authority to convey any interest the principal has in any property.

5-23. Designation of "trustee"

When the name of a party to an instrument is followed by "trustee" or "as trustee" or "in trust", and neither this instrument nor any other recorded instrument in the chain of title sets forth the powers of such party, or names as the beneficiary, a conveyance by such party can be approved without investigation of the power of such party to convey.

5-24. Trust conveyances--curative statute

A curative statute validates transfers made to or by a trust prior to July 1, 1991, and construes such transfers to have been made to or by the trustee.

5-25. Property in trust

Real property acquired in the name of a trust should be conveyed in the same manner as title was taken.

5-26. Discrepancy in corporate name

The alternate use of "Co." for Company, "Inc." for Incorporated, "Corp." for Corporation, "LLC" for Limited Liability Company, "LLP" for Limited Liability Partnership, "PLC" for Professional Limited Liability Company, "Coop." for Cooperative, "Ltd." for Limited, "P.C." for Professional Corporation, and similar common abbreviations, the omission or inclusion of the word "The," whether or not a part of the corporate name, and the alternate use of "and" and " & " may be disregarded as immaterial unless there is evidence of record that the variation has significance.

Where a place or location preceded by "of" or "in" is a part of the title of a corporation and a variance relative thereto appears in the record, it is proper to require the execution of another instrument or an appropriate showing of identity.

5-27. Corporate deed

The corporate seal or corporate acknowledgment of any corporation attached to a deed, mortgage, assignment of mortgage, release of mortgage or other instruments is prima face evidence that an officer was duly authorized to execute the instrument in behalf of the corporation and that the person has authority.

5-28. Corporate existence

When an instrument of a private corporation appears in the title and the instrument is executed, acknowledged and sealed in proper form, the title examiner may assume that the corporation was legally in existence at the time the instrument took effect.

5-29. *Ultra vires* not assumed

Where an instrument of a domestic or qualified foreign private corporation appears in the title, an examiner may assume that the corporation was authorized or not forbidden to acquire and sell the real property affected by instrument.

5-30. Corporate acknowledgments

A corporate acknowledgment should not be considered void because the notary public is

also an officer, director, employee or stockholder of the corporation.

5-31. Conveyances to or from unincorporated associations

Prior to January 1, 1992, a conveyance to an unincorporated association vests title in such association. Any unincorporated association may mortgage or convey real estate so long as the resolutions and notices as required by SDCL 43-25-24 are complied with.

5-32. Authority of unincorporated associations

An unincorporated religious, benevolent, fraternal, charitable or educational association may mortgage or convey any real estate which is owned by such association by adopting a proper resolution authorizing such mortgage or conveyance and publication as required by statute.

5-33. Conveyance--limited liability company, authority presumed

Any instrument duly executed and acknowledged by an authorized person of a limited liability company may be presumed to be within the authority and duly authorized by the limited liability company.

5-34. Execution--corporate or limited liability company

A title examiner may presume the power and authority of any officer of a corporation, except a bank, if a corporate acknowledgement or corporate seal is made a part of the document. Upon review of the Articles of Organization, a title examiner may presume the power and authority of any manager of a manager-managed limited liability company or member of a member-managed limited liability company to execute and acknowledge a document affecting property, unless the Articles of Organization limit the authority.

5-35. Political subdivisions--no specific standard

Note: The acts of any political subdivision must be tested by specific statutes governing the type of political subdivision and type of transaction. This would include organized and unorganized counties, school districts, water and sewer districts and others. This would include organized and unorganized counties, school districts, water and sewer districts and others.

6-01. Delivery, delay in recordation

Delivery of an instrument, acknowledged and recorded, is presumed. Delay in recordation, with or without record evidence of the intervening death of the grantor, does not dispel the presumption.

However, the fact that such a deed is presumed to be valid and effective does not dispose of the question whether the transfer of the property conveyed may have been subject to inheritance tax. (See Standard [7.1] relative to lien for inheritance tax.)

6-02. Date of acknowledgment

A title examiner may disregard the absence of the date of acknowledgment or an acknowledgment dated before or after the date of the instrument.

6-03. Notary act presumed valid

A title examiner may presume that a notarial act outside of South Dakota is in accordance with the laws of that jurisdiction.

6-04. Expired notary

Where the record of an instrument shows a notarial commission to have expired prior to the date of acknowledgment, the acknowledgment is invalid, but the record of the instrument is constructive notice, subject to the provisions of SDCL 18-5-13.

6-05. Notary seal

All certificates of acknowledgment by notaries public on documents filed for record are binding, legal, and enforceable regardless of whether the notary seal is stamped or embossed.

6-06. *Lis pendens*--effect of judgment

The entry of judgment in an action for which a *lis pendens* has been filed discharges the *lis pendens*.

6-07. Statute of limitations--*lis pendens*

A title examiner may disregard a *lis pendens* of record more than ten years.

7-01. Signatures by mark

A title examiner should not object to a signature or subscription by "mark" even though there is no witness if the instrument contains a proper certificate of acknowledgment.

7-02. Alternative grantees

A conveyance to grantees in the alternative renders the conveyance void.

7-03. Strangers to title

An instrument executed by a person who is a stranger to the record chain of title at the time such instrument is recorded does not make the title unmarketable, unless recently recorded, in which event some inquiry may be justified.

A title examiner should take notice of the interest of a person joining with the record owner in a contract, mortgage, lease, plat or easement, other than a spouse joining for possible homestead interest. Conveyances by strangers to the chain of title may be disregarded, unless a title examiner has actual notice of knowledge (through sources other than the record) of the interest of the grantor, or unless subsequent to such conveyance there is recorded a deed or other conveyance vesting title in such stranger.

7-04. Quit claim--after acquired title

A quit claim deed does not pass after-acquired interest in property, unless words expressing such intent are added.

7-05. Deeds--after acquired title

A warranty deed, limited warranty deed or special warranty deed passes after acquired title.

7-06. Marketable title acts

Chapter 233 Laws for 1947

Chapter 256 Laws for 1951 (SDC Supp. 51.16B)

Chapter 266 Laws for 1957 (SDC 1960 Supp. 51.16B)

[Chapter 43-30]

The above are valid statutes of limitation and may respectively be relied upon as a cure or remedy for imperfections in the chain of title and a bar against all claims arising prior to the several dates referred to in each, except those specifically reserved therein. As a prerequisite to reliance upon these statutes for the purpose of title examination, it will be necessary only to require that the ~~abstract~~abstract or record examination show the recording of an affidavit of possession, as required by the act relied on; that such possession is in the holder of the record title and that there is no claim of record under the provisions of the act relied upon.

7-07. Affidavit of possession to be recorded--affiant

In the event the condition of the title ~~or the abstract~~or the abstract is such that it is deemed necessary or advisable to gain the benefit of the provisions of the marketable title statute, now SDCL 43-30, in order to attain the benefit thereof it shall be necessary that the Affidavit as prescribed therein be executed and placed of record. The Affidavit may be made by anyone who knows the facts.

7-08. Affidavit of possession as basis for creating marketable title under tax deed

Where a tax deed is regular on its fact and has been of record for twenty-three years or longer, the title conveyed thereunder can be considered as marketable, if the affidavit of possession as prescribed by SDC Supp. 51.16B07, as amended by Ch. 266 of the Laws of 1957, SDC 1960

Supp. 51.16B07 [§ 43-30-7] is made and filed for record.

7-09. Use of affidavits

A title examiner may rely upon affidavits as to facts in relation to the title in the following cases:

1. From any person based on personal knowledge stating:
 - a. The identity of any person appearing in such chain of title under names varying in the spelling thereof or in the use of initials; or
 - b. That certain property was or was not homestead property.
2. As to marital status.
3. To explain ambiguous recitals in instruments of record.
4. Marketable record title affidavits under SDCL Ch. 43-30.
5. When authorized by any other statute.

7-10. Contents of affidavit--interest of maker^[EOI]

An affidavit may be used as a means of correcting discrepancies and variances in names and in other cases where it may be accepted as curative evidence under South Dakota statute. It should include some showing that the material statements in it are based on affiant's personal knowledge. The value of an affidavit is not diminished by the fact that the maker is interested in the title or the subject matter of the affidavit, when nothing appears in the record to affect his credibility.

7-101. Corrective instruments

A grantor who has conveyed by an effective, unambiguous instrument cannot, by executing another instrument, make a substantial change in the name of the grantee, decrease the size of the premises or the extent of the estate granted, impose a condition or limitation upon the interest granted, or otherwise derogate from the first grant, even though the latter instrument purports to correct or modify the former. However, marketability dependent upon the effect of the first instrument is not impaired by the second instrument.

7-112. Instruments which are altered and re-recorded

The act of re-recording an instrument, after it has been materially altered, does not of itself destroy the rights of the parties to the original unaltered instrument.

To give effect to a material alteration of a previously recorded document affecting title to real property, the instrument must be re-executed, re-acknowledged, re-delivered and re-recorded. However, a grantor cannot unilaterally derogate from a previous grant; see Standard 3.4.

A material alteration to an instrument is defined as an alteration which changes the legal effect of the instrument or the rights and liabilities of the parties to the original instrument.

7-123. Conveyances--farm credit--right of first refusal

Agricultural real estate that is conveyed or leased by a Farm Credit System entity after January 6, 1988 is subject to a right of first refusal in the previous owner-mortgagor. If the Farm Credit System entity conveys or leases land to a person other than the previous owner-mortgagor had been offered the right to repurchase or lease the acquired land, and has failed to exercise that right. Documentation can include an affidavit from a Farm Credit System agent.

8-01. Ownership of water

All waters within the limits of the State of South Dakota subject to limitations as provided belong to the public. An examiner may ignore in his opinion any reference thereto.

8-02. Accretion, reliction, erosion and avulsion

The effects of accretion, reliction, erosion and avulsion should be taken into consideration

when examining title to real property bound by a body of water.

8-03. High-water mark boundaries

The public has a right to use the strip of land 50 foot landward from all navigable waters provided the strip is between the ordinary high water mark and ordinary low water mark of public bodies of water.

8-04. Road and street as boundaries

An adjacent owner is presumed to own to the middle of a platted road, though the public has a right to use the platted road.

8-05. Vacated highway, street, alley or public right of way

A conveyance of real estate, which abuts upon a vacated highway, street, alley, other public right-of-way, includes the vacated highway, street, alley or public right-of-way, either by operation or presumption of law, unless a contrary intent appears.

8-06. Conveyances to state for highway purposes

In transfers to the State of South Dakota or any of its political subdivisions of property for highway purposes, the grantee only acquires an easement. (No opinion is expressed as to ownership of non-fluid minerals/substances on or underlying the grantee's acquired right of way.)

8-07. Dedication of streets, etc.

Title is not made unmarketable if streets, alleys and public grounds in a platted area, outside of or inside a municipality, are not expressly dedicated in the owner's certificate on the plat. They may be dedicated in any appropriate manner.

~~8-08. Consult SD Mineral Title Standards~~

~~A title examiner should consult the South Dakota Mineral Title Standards if the title opinion being given includes the status of a mineral estate or interest.~~

8-098. Mineral ownership--notation

A title examiner need not refer to the mineral ownership where no severance appears in the record, unless a specific request for it is made.

8-109. Severance of minerals--notation

A title examiner need not note the severance of the mineral estate from the surface nor indicate the present ownership of the minerals if the examiner includes a caveat that no opinion is expressed as to the status of the mineral estate.

8-110. Conveyances of royalties and minerals

In conveyances affecting mineral estates distinction between perpetual non-participating royalty and a conveyance of perpetual mineral interests should be noted, and the respective burden of a perpetual royalty interest on the mineral estate should be contained in the opinion.

8-121. Oil and gas leases--contingent future interests

Where an oil and gas or other mineral lease covers land subject to a contingent future interest, the oil and gas or other mineral lease must be executed by the statutory trustee.

8-1312. Leases--oil--gas

Prior to July 1, 1995, where the mineral owner is deceased an oil-gas lease must be executed by the personal representative as provided by statute.

After July 1, 1995, a personal representative of an estate holding unrestricted letters may execute oil and gas leases and other instruments affecting the mineral estate without court approval.

9-01. Easements as encumbrances

Easements, including those reflected on plats, servitudes or non-appurtenant restrictions on the use of real property should be noted as encumbrances.

9-02. Rights-of-way as encumbrances

A covenant of warranty should not be considered broken by the existence of a highway or railway, or right-of-way for either, upon the land conveyed by an instrument of conveyance, unless otherwise particularly specified in the deed. However, the existence of such highway, railway, or right-of-way should be noted.

9-03. Conveyances--effect of reservations or exceptions

A deed referring to a nonexistent reservation or exception and made expressly subject thereto does not operate to reserve and except to the grantor any interest in the matter or matters made subject to exception or reservation and the same shall be considered to have passed to the grantee notwithstanding such recitation in the deed.

9-04. Railroads

When determining the status of title for lands that contain ownership by a railroad in the chain of title, you must consider the source of the title and the language of the document vesting title in the railroad. Railroads may obtain title through grants, condemnation or purchase. Language in the vesting document may state or imply a fee simple interest or easement interest ~~buy-by~~ several cases ~~(listed below)~~ have interpreted the interests differently depending upon the timing of the conveyance and the language of the document.

9-05. Wind or solar energy easements

A property owner may grant a wind or solar easement properly created and recorded, however, the maximum term of such easement is fifty years. Any such easement is void if no development of the potential to produce energy from wind or solar power associated with the easement has occurred within five years after the effective date of the easement ~~began~~.

9-06. Wind or solar energy rights--limitation on severance

No interest associated with the production or potential production of energy from wind or solar power may be severed from the surface estate as defined in § 45-5A-3 except that such rights may be leased for a period not to exceed fifty years. Any such lease is void if no development of the potential to produce energy from wind or solar power has occurred on the land within five years after the lease began.

9-07 – Wind or solar energy easement – mortgage by holder

If the wind or solar easement holder mortgages or otherwise encumbers to any party any part of the easement holder's rights and interests under the easement, any such mortgage or encumbrance on the easement is the responsibility of the wind or solar easement holder and attaches only to the easement holder's rights and does not otherwise attach to the land or obligate the property owner.

10-01. Covenants, conditions and restrictions defined

The term "covenants, conditions and restrictions" is used in title examining to describe various limitations on the use of land imposed in deeds or other instruments in the chain of title.

10-02. Covenants, conditions & restrictions are generally deemed to run with the land

Covenants contained in conveyances of real property are appurtenant and pass with them to the successor in interest and run with the land.

10-03. General plan restrictions--subdivision of tracts

Uniform restrictions as to the use and occupancy of all lots in a subdivision may be imposed by properly executing and recording a declaration or contract.

10-04. Revocation of declaration or contract--execution by successor in interest

In first and second-class municipalities an owner and all successor owners in interest may revoke and cancel the covenants by a properly recorded deed of revocation. Such revocation is not effective until approved by the governing body of the municipality.

10-05. Expiration of covenants, conditions and restrictions

Declarations authorized by SDCL 11-5-1 and 11-5-2 shall only be prescribed but not exceed ~~twenty-five~~forty years from the date of the declaration.

10-06. Validity of restrictions

A title examiner need not determine the validity or enforceability of covenants, conditions or restrictions but should show those in the chain of title.

10-07. Restrictions in derogation of existing law

Covenants, conditions or restrictions which contain language that discriminates on the basis of race, color, religion, sex or national origin are unenforceable and void.

11-01. Medical assistance lien

A medical assistance lien created under SDCL 28-6 becomes a lien against real property only from the time the lien is filed with the Register of Deeds.

11-02. Child support liens

The Department of Social Services may impose a lien for support obligations and the notice of lien, properly filed with the Register of Deeds, establishes the priority as of the date of filing.

11-03. Tax lien--county

A county poor lien becomes a lien against real property at the time the record is filed in the office of the Register of Deeds of the county in which the poor person resides or in the county of his legal residence or last residence if he is an inmate of a state institution or deceased. All liens created prior to July 1, 1970, are terminated as a matter of law.

11-04. Poor relief lien

Any lien established under SDCL 24-14 with regard to county poor relief shall continue, a foreclosure shall not be commenced until one year after the last payment to or for the benefit of the poor person during the lifetime of the poor person or until after the death of the poor person. Any lien or encumbrance created prior to July 1, 1970, is terminated as a matter of law.

11-05. Claims under federal laws

A title examiner need not mention in the opinion the possibility of claims under federal laws which do not show upon local records.

11-06. Tax Lien--State or Federal

A federal or state tax lien becomes a lien against real property from the time the lien of the tax is entered in the index of tax liens kept by the register of deeds.

12-01. Judgments--lapse

A title examiner may ignore a judgment after ten years have passed from the date on which it was docketed unless the judgment has been renewed as provided in SDCL 15-16-33.

12-02. Divorce--judgment affecting defendant's title

A divorce judgment which states that the defendant is entitled to the plaintiff's interest in real property owned either jointly between plaintiff and defendant or by plaintiff alone shall be sufficient to vest title in the defendant if the divorce judgment contains the following information and statement:

- (1) A legal description of the property being vested in said defendant; and
- (2) A statement by the court that should the plaintiff fail to execute an appropriate instrument of conveyance, the judgment shall act in lieu of such conveyance.

12-03. Divorce--sufficiency of judgment

A divorce judgment vesting in the plaintiff the defendant's interest in real property, whether owned solely by said defendant or jointly with said plaintiff, shall be sufficient to vest the defendant's interest in such property, provided that the judgment or the court's file affirmatively shows the following:

- ~~(3)~~(1) The legal description of property;
- ~~(4)~~(2) A statement by the court that should the defendant fail to execute appropriate instrument of conveyance, the decree thus being entered shall act in lieu of such conveyance; and
- ~~(5)~~(3) The defendant appeared in said action after having been served either by publication or personally and by such appearance, either stipulated to the entry of judgment and property settlement, which stipulation agreed to the vesting of the property in question or the action was litigated after due appearance at the hearing at which said judgment was ordered; and
- ~~(6)~~(4) If there was no appearance by the defendant after being served either personally or by publication, the judgment must affirmatively show further as follows:
 - ~~(7)~~(a) If defendant was served personally, that the complaint indicated the action was for the purpose of divesting defendant's interest in the particular property and the complaint set forth in full the legal description of said property; and
 - ~~(8)~~(b) If the service was by publication, that the summons and complaint indicated the action was for the purpose of divesting defendant's interest in the particular property by full legal description and that the affidavit for publication indicated that the action was for divorce and also for purposes of divesting defendant's interest in real property.

12-04. Notice of levy

A notice of levy, when properly recorded under SDCL 15-18-22, may only be released upon:

1. Proof of the satisfaction of judgment;
2. A deed from the debtor specifying the intent to satisfy the judgment;
3. Proper release from the levy;
4. Sheriff's deed; or
5. Release or abandonment of the execution.

12-05. Real property abandoned by bankruptcy trustee

The marketability of title to real property abandoned by a bankruptcy trustee for debtor-in-possession exercising the powers of a bankruptcy trustee is not adversely affected if the following should appear of record:

- ~~(9)~~(1) The petition in bankruptcy of the title holder;
- ~~(10)~~(2) The certificate of commencement of a case under Title 11, United States Code;
- ~~(11)~~(3) If the case was commenced under Ch. 7, Ch. 12 or Ch. 13 of Title 11, United States Code, or if a trustee was appointed pursuant to 11 U.S.C. § 1104, the order appointing trustee and the order approving trustee's bond;
- ~~(12)~~(4) In any case under Title 11, United States Code, a motion for abandonment, an order for or notice of hearing with proof of service, and an order authorizing abandonment; if no separate proceedings were had for abandonment but such abandonment was made a part of the final report of the trustee, there should appear of record the final report, the notice of hearing on the final report, with proof of service, and the order closing the estate;
- ~~(13)~~(5) If the property was abandoned pursuant to the terms of a plan under Ch. 11, Ch. 12 or Ch. 13 of Title 11, United States Code, an order for or notice of hearing on confirmation with proof of service and an order of confirmation.

12-06. Real property claimed as exempt by debtor

The marketability of title to real property claimed as exempt by a debtor in a bankruptcy proceeding is not adversely affected if the following should appear of record:

- ~~(14)~~(1) The petition in bankruptcy of the title holder;
- ~~(15)~~(2) The certificate of commencement of a case under Title 11, United States Code;
- ~~(16)~~(3) That portion of the schedules of the debtor reflecting that the property involved was listed and claimed as exempt;
- ~~(17)~~(4) The certificate of the clerk of the bankruptcy court or the clerk of the United States District Court showing that no objections to the debtor's claim of exemptions were filed, or an order of the Bankruptcy Court or United States District Court determining that the property was properly exempt.

12-07. Real property sold free and clear of any interest in course of bankruptcy proceedings

The marketability of title to real property sold free and clear of any interest in such property in the course of any bankruptcy proceeding is not adversely affected if the following should appear of record:

- A. If the real property is sold by a debtor-in-possession then the following shall be required:
- ~~(18)~~(1) The petition in bankruptcy of the title holders;
 - ~~(19)~~(2) The certificate of commencement of case under Title 11, United States Code;
 - ~~(20)~~(3) The notice of proposed action or motion to sell property free and clear of any interest, an order for or notice of hearing with proof of service, and an order confirming such sale with proof of service;
 - ~~(21)~~(4) If the debtor did not hold the only ownership interest in the property, a summons and complaint requesting authority to sell free and clear of the other ownership interest, with proof of service, an order or judgment authorizing such sale with proof of service, a notice of proposed action or motion to sell property free and clear of any interest; an order for or notice of hearing with proof of service, and an order confirming sale with proof of service;
 - ~~(22)~~(5) A deed from the debtor-in-possession.
- B. If the real property is sold by a trustee then the following shall be required:
- ~~(23)~~(1) The petition in bankruptcy of the title holders;
 - ~~(24)~~(2) The certificate of commencement of case under Title 121, United States Code;
 - ~~(25)~~(3) If the case was commenced under Ch. 7, Ch. 12 or Ch. 13 of Title 11, United States Code, a copy of the document appointing the Ch. 7, Ch. 12 or Ch. 13 trustee;
 - ~~(26)~~(4) If the case was commenced under Ch. 11 of Title 11, United States Code, and a trustee was appointed pursuant to 11 U.S.C. § 1104, a certified copy of the order appointing the Ch. 11 trustee;
 - ~~(27)~~(5) The notice of proposed action or motion to sell property free and clear of any interest, an order for or notice of hearing with proof of service, and an order confirming such sale with proof of service;
 - ~~(28)~~(6) If the debtor did not hold the only ownership interest in the property, a summons and complaint requesting authority to sell free and clear of the other ownership interest, with proof of service, an order or judgment authorizing such sale with proof of service, a notice of proposed action or motion to sell property free and clear of any interest; an order for or notice of hearing with proof of service, and an order confirming sale with proof of service;
 - ~~(29)~~(7) A deed from the trustee.

12-08. Bankruptcy lien avoidance

A lien may be deemed to have been extinguished if the bankruptcy court issues an order avoiding the lien.

12-09. Bankruptcy discharge

A discharge operates to extinguish the personal liability of the debtor only. It does not extinguish the debt as to any other person or any lien perfected after filing and which is not avoided.

13-01. Mechanic's lien

A mechanic's lien may be disregarded after lapse of the time within which suit for foreclosure may be filed (six years), unless proceedings for its foreclosure have previously been commenced.

13-02. Mechanic and materialmen's lien

The filing of a Notice of Project Commencement does not constitute a cloud, lien or encumbrance upon, or defect to the title of the real property described in the notice.

14-01. Mortgages

Whenever a conveyance shows affirmatively that it was given as security it should be treated as a mortgage.

Whenever a conveyance is from the record owner to the holder of a mortgage on the property that fact alone does not place a subsequent purchaser on inquiry as to whether the conveyance was given as security and is not grounds for an objection unless by reason of the date or recital it places a purchaser on inquiry.

14-02. Reference to nonrecorded mortgage

When a deed filed for record more than twenty years refers to a mortgage which is not shown ~~by the abstract and theof~~ record does not show that any action has been commenced with reference thereto, such reference to mortgage may be disregarded.

14-03. Mortgages--release or assignment

Where a mortgage has been re-recorded and a release or assignment is given which describes only one of the recordings, the release or assignment is sufficient; but where a new mortgage is recorded which purports to be given to correct a defect in a former mortgage, there should be a release or assignment of both mortgages.

14-04. Mortgages--statute of limitations

A mortgage past due more than fifteen years from its due date or recorded extension thereof, or if no due date is stated therein or ascertainable therefrom, thirty years from the date of the mortgage, is ineffective and void and the record thereof may be disregarded.

14-05. Satisfaction by one of plural mortgagees

Where a mortgage is given to two or more mortgagees a satisfaction by one of such mortgagees is sufficient to release the mortgage except where the mortgage shows that it secures debts which are owned separately by the different mortgagees.

14-06. Release of mortgage by other than mortgagee

A title examiner may treat a mortgage as satisfied if a mortgage release complying with the requirements in SDCL 44-8-31 is recorded.

14-07. Release--assignment of rents

A title examiner shall require a release of a separately recorded assignment of rents even though the mortgage given on the same date or for the same debt is satisfied or released, unless the assignment of rents by its own terms is satisfied when the mortgage is satisfied or released or the satisfaction or release indicates the underlying debt is paid.

14-08. Defect in satisfaction of mortgage

A satisfaction of a mortgage is sufficient notwithstanding error in some details in date, amount, book and page of record, property description, names and position of parties, or other details, if, considering all circumstances of record, sufficient data are given to identify the security interest sought to be satisfied.

14-09. Deeds--unsatisfied mortgage

A deed from the record holder of an unsatisfied mortgage or other encumbrance, who is also the record title holder, which does not except the encumbrance or state that the deed is given subject to the encumbrance, is sufficient as a discharge of the encumbrance.

14-10. Mortgage--merger of title

If the holder of a mortgage acquires the estate of the mortgagor, the mortgage interest may be merged in the fee and the mortgage extinguished, although it is only when the fee and the lien center in the same person without any intervening claims, liens or equities that a merger of the title and the lien will take place.

However, merger depends upon the intent of the parties. In determining intent, equity is not limited by the rules of law, and under unusual circumstances, a mortgage may be extinguished where it would continue to exist at law, or a mortgage may be preserved where it would be merged at law. Because of the difficulty in determining what a court might decide in any particular case, if merger cannot be determined from the instruments, then a merger is not ordinarily assumed so long as the mortgage remains unsatisfied of record.

If there is an outstanding or intervening lien or title, the foundation for the merger does not exist and no merger will be declared.

14-11. Foreclosure of mortgage by action

The instruments required to be recorded to show title based on a mortgage foreclosure by action are the sheriff's certificate of sale, and the sheriff's deed.

If mortgagor redeems, recording the original certificate of redemption will eliminate the foreclosed mortgage and does not affect status of junior liens. Satisfaction of the original mortgage is neither necessary nor desirable. Foreclosure cuts out subsequent liens and satisfaction or release of them is not necessary.

Satisfaction of lien holders, properly joined in the action, is not necessary.

14-12. Foreclosure by advertisement

The instruments required to be recorded to show title based on a mortgage foreclosure by advertisement are the sheriff's certificate of sale, any certificates or affidavits of non-redemption, the affidavit of publication of notice of sale, an affidavit stating notice was provided to all required parties and that no request for foreclosure by action was made, an affidavit relating to the military status of the owner and the sheriff's deed.

15-01. Probate--chain of title

Prior to July 1, 1995, a certified copy of a decree of distribution made by a South Dakota circuit court is sufficient to complete the chain of title.

15-02. Executor's deed

For conveyances out of an estate prior to July 1, 1995, a certified copy of an order confirming sale made by a South Dakota circuit court and an executor's or administrator's deed is necessary to complete the chain of title, except in certain circumstances of an independent administration.

15-03. Conveyances made under probate

For conveyances under the Uniform Probate Code, SDCL ch. 29A, a duly recorded personal representative's deed or a duly recorded order of complete settlement distributing specifically described real property to the heirs or devisees in specified shares or proportions is required to complete the chain of title.

15-04. Chain of title--probate

A title examiner examining a title for an intended purchaser or mortgagee for value from a distributee of an estate need only require proof of unrestricted letters of the personal representative in effect on the date of conveyance to complete the chain of title.

15-05. Authority of personal representative

Upon the death of a person, the real and personal property devolves to the heirs or devisees, subject to claims and the administration of the estate, which includes the authority of the personal representative to convey.

15-06. Deed of distribution

A deed of distribution is evidence of the distributee's title. The distributee's receipt of the deed is conclusive evidence that the distributee is the one entitled to the property.

15-07. Delayed probate

If a probate has not been commenced within three years from the decedent's death, a personal representative may be appointed for the purposes of transferring property by will or intestacy.

15-08. South Dakota inheritance tax liens

The South Dakota inheritance tax lien is limited to twelve years from the date of death for any decedent dying prior to July 1, 2001. When the record does not establish that a decedent died more than twelve years prior to the examination of the title, a title examiner should require evidence of record that no tax is owed, that any tax owing has been paid, or that any potential lien has been removed from the subject property.

15-09. Termination of life tenant

To establish termination of a life tenant in real property, the certified record of death must be recorded together with an affidavit setting out the legal descriptions of the property involved.

15-10. Probate--existence of federal lien

No objection shall be made to the possible existence of federal tax liens if the personal representative provides to the title examiner a lien release, a closing letter or an affidavit stating that no federal estate tax liability exists.

15-11. Authority of successor fiduciary

A successor personal representative or successor conservator has all of the powers of the succeeded personal representative and succeeded conservator, subject to any restrictions indicated in the letters.

15-12. Term of authority for fiduciary

The authority of a personal representative or conservator continues until the appointment is terminated or modified. Unless otherwise indicated, a title examiner may presume that letters originally issued continued in effect and unmodified from the date of their issuance to the date of any subsequent certification of a copy thereof.

15-13. Acts authorized by personal representative or conservator

No order confirming or authorizing any act by a personal representative or conservator, not contrary to any restriction shown in the letters, shall be required.

15-14. Guardian's deeds

For conveyances from a guardian prior to July 1, 1993, a certified copy of an order of a

court confirming the sale, together with a guardian's deed is necessary to complete the chain of title.

15-15. Conservator's deeds

For conveyances from a conservator on or after July 1, 1993, a conservator's deed and a certified copy of the letters of conservatorship from a court of competent jurisdiction are necessary to complete the chain of title.

15-16. Authority of conservator

A certified copy of proof of authority of appointment from a court of competent jurisdiction and bond, and a certified copy of unrestricted letters of the conservator which establishes that the letters were in effect on the date of the title transaction, are necessary to evidence the conservator's authority.

15-17. Foreign personal representative

A foreign personal representative must be appointed by an order from a South Dakota court or clerk, qualify and be issued letters in order to administrate the real estate.

15-18. Guardian and conservator

The fact that an individual or entity deals with a guardian, if appointed prior to July 1, 1995, or conservator with knowledge of the representative capacity does not alone require an inquiry into the guardian's or conservator's authority, except that any such individual or entity is charged with knowledge of restrictions that may appear on the letters of guardianship or conservatorship.

15-19. Omitted real estate or faulty description of closed estate

When an estate has been as administered in probate court and a final decree of distribution recorded in the land records, no reopening of the estate shall be required to convey an interest of the decedent merely because: (1) all of the real estate of the decedent or interest therein was not included in the inventory or in the decree of distribution, or (2) the description of such estate or interest was mis-described in the probate record. A deed by heirs or devisees, whether in warranty or quitclaim, shall be effective to pass title to real estate if the existing probate record enables a clear and unambiguous determination that the grantors would be the persons entitled to decree of such estate or interest if the estate were reopened to correct the error or include the omitted property.

16-01. Omission and inconsistency of dates

The fact that an instrument affecting title may not be dated, or that inconsistency exists between its date, the date of attestation, the date of acknowledgment or the date of recordation, does not impair marketability, unless the inconsistency is of such peculiar significance, when considered with other circumstances of record, as to impel a reasonable suspicion on the part of the examiner that the title may be defective.

16-02. Effect of curative acts

An act, curative of matters of execution, acknowledgment and recording, or procedural omission, irregularities or defects, is presumed to be valid legislation, effectively eliminating objections based upon the imperfections of title which fall within its scope as to subject matter and date, thus avoiding necessity of action to quiet title.

A curative statute purporting to legalize alleged defects in probate proceedings is inoperative as against a claim based upon legal action or proceeding which the record shows was pending at the time the curative statute went into effect, whether or not the curative statute so states.

~~**16-03. Contents of affidavit—interest of maker**~~

~~An affidavit may be used as a means of correcting discrepancies and variances in names and in other cases where it may be accepted as curative evidence under South Dakota statute. It should include some showing that the material statements in it are based on affiant's personal knowledge. The value of an affidavit is not diminished by the fact that the maker is interested in the title or the subject matter of the affidavit, when nothing appears in the record to affect his credibility.~~

16-043. Condominiums

A condominium project is established whenever the developers or the owners of a building or buildings expressly declare, through the recordation of a master deed or lease, their desire to submit their property to the formation of a condominium under the laws given in SDCL ch. 43-15A.

19-01. Metes and bounds

When any owner of a government subdivision or a platted tract or lot divides that land into parcels for the purpose of transfer that cannot be described except by metes and bounds, the parcels of land so divided must be platted before any instrument of transfer can be recorded. Real property descriptions using metes and bounds may be recorded only if a previous conveyance by the same metes and bounds has been made and recorded.

19-02. Legal description from survey or plat

A legal description is eligible for recordation if the document contains a reference to a legal survey or is capable of being indexed in one of the two statutory numerical indexes maintained by the office of the Register of Deeds for that particular county.

If a legal description includes a reference to a platted division or subdivision, the legal description should also identify the lot or tract number, the block or tract number and the name of the platted addition or subdivision taken directly from the recorded plat. The legal description should also include a concluding reference identifying the county and state where the plat is recorded along with the book and page.

19-03. Platting

Any subdivision of land containing two or more lots shall be platted or replatted and must be submitted for proper platting according to law.

19-04. Plats ~~;~~ designation or variations in addition or subdivision name

Although a plat should be referred to in a conveyance as entitled in the owner's dedication clause in the filed plat as reflected by the ~~abstract~~abstract or record examination (without reference to the present state of incorporation of the municipality unless part of the plat name), minor inaccuracies in description such as the interchange of the words "subdivision" and "addition," the addition or omission of the word "first" when there is only one such addition, and other similar discrepancies which do not create a problem of identification can be disregarded, provided a title examiner is satisfied that the discrepancies do not create the possibility of reference to any other platted area in the village, city, municipality, township or other government subdivision of which the plat is part. It is sufficient in such instances to request the abstracter to note that there is only one such platted area.

19-05. Plats, effect of joinders in

A conveyance from the record owner shall be sufficient notwithstanding that a stranger to the title joins in the dedication of the plat or covenants of which the tract is a part if the record shows an interest of said stranger in another tract within the plat or subject to the covenants.

Such showing may be by recitation in the plat or covenants as to which parts thereof each joining party claims an interest. If the plat or covenants do not so designate, a title examiner should

require the abstracter to place in the ~~abstract~~[abstract or record examination](#), for reference purposes, the conveyance to the joining party of part or parts of the platted area.

19-06. Plats, vacation before lots sold

The recording of an instrument executed by all of the owners of a subdivision vacating a plat before any lots have been sold extinguishes all easements created by the plat and revokes the dedication to the public of all rights in the streets, alleys, easements and public grounds.

19-07. Plats, vacation after lots sold

The vacation of all or any part of a plat after the sale of any lots must be executed by all of the owners of the subdivision and by all of the owners of the lots sold.

19-08. Discrepancy in survey

Title shall not be considered unmarketable because a survey discloses differences in deed or plat distances or courses and subsequently measured distances or courses if the surveyor states that both descriptions describe the same parcel.

19-09. Plats, effect of replat on rights in the public and easements.

The replat of a platted subdivision extinguishes the rights in the public and the easements created in the original plat as set forth in the replat or to the extent they are inconsistent with the replat.

23-01. Marketable record title--statute of limitations

No title shall be considered unmarketable by reason of any claim or defect twenty-two years or older, if the record title holder has an unbroken chain of title through the holder's immediate or remote grantors by a deed of conveyance which has been recorded twenty-two years or more, and if the record title holder is in possession of the property. This standard does not extinguish or bar those claims provided for under SDCL 43-30.

23-02. Title by patent

The chain of title must be based upon a recorded patent or certified copy of the patent except when the title is founded upon a congressional grant which by its terms does not require a patent, a judgment or a treaty.

23-03. Validity of patent

A title examiner may not assume the validity of a fee patent issued pursuant to the General Allotment Act of February 8, 1887.

A title examiner may rely upon a deed from the heirs of a deceased allottee as passing title free of trust provided that the deed has been approved by the Secretary of the Interior.

23-04. ~~Affidavit—lending institution~~[Financial institution name change or successor](#)

A title examiner may rely on a recitation in an instrument of record executed by a regulatory authority, or an officer or counsel for a ~~lending institution~~[financial institution](#) that the ~~lending institution~~[financial institution](#) changed its name or is the successor of one or more previous ~~lending institutions~~[financial institutions](#).

26-01. Tax title

Neither a tax deed issued pursuant to any of the provisions of SDCL 10-25-12, nor any combination of such deeds, terminates the rights of the owner who owned it prior to its sale for taxes, unless there is:

~~(30)~~(1) A judgment in a quiet title action;

~~(31)~~(2) A marketable Record Title Affidavit pursuant to SDCL 43-30-7 (using as a "root of title" the tax deed from the county); or

~~(32)~~(3) A deed conveying the prior owner's interest.

26-02. Effect of tax deed

A valid tax deed clothes the grantee with a new and complete title under an independent grant from the sovereign authority of the state, extinguishing all prior titles.