



Standards of Title Committee Approves a New Standard

By Ellen L. Sostman

The Special Committee on Standards of Title has approved a new proposed Standard, Standard 19.8 – Title Derived through Foreclosure Where Owner Is Known or Believed to Be Deceased at Commencement of Action. This Standard sets out the rule that a title derived through foreclosure where the owner of the property is known or believed to be deceased when the action is commenced is marketable if (a) all of the decedent's heirs or devisees were named as defendants in the action, or (b) the plaintiff obtained and published an order of notice pursuant to Conn. Gen. Stat. Sect. 52-69, or (c) the plaintiff named as defendants the known heirs and obtained and published an order of notice as to unknown heirs. The commentary can be summarized as follows:

Comment 1 addresses what standard does not cover: foreclosures that are commenced against a deceased owner named as defendant where there was no knowledge of his or her death, and foreclosures commenced against an owner who is properly named and served as a defendant, but who subsequently dies. In the first instance, any service made on the deceased owner is invalid and the foreclosure fatally flawed. In the second instance, where the death occurs after the recording of a lis pendens in proper form, the heirs or devisees of the owner who acquired title by his or her death are bound by the lis pendens.

Comment 2 notes the legal precept, dis-

cussed in Standards 13.1 and 13.2, that title to real property passes at death to the decedent's heirs or devisees. In the context of a foreclosure commenced after the death of the owner, that precept requires that all heirs or devisees of the decedent be joined as defendants. If a probate estate has been opened, the probate court finding of heirs or devisees may be used as the basis for naming and serving defendant title holders.

Comment 3 discusses the use of an order of notice pursuant to Conn. Gen. Stat. Sec. 52-69 where no estate was opened and the decedent's heirs or devisees are unknown. This comment sets the rule that second hand information, such as is obtained from an obituary, is not adequate, by itself, to identify all heirs with certainty. Title derived only through the use of such information to name and serve defendant title holders is not marketable.

Comment 4 addresses the final aspect of the rule set out in the head note: where it is possible to determine names and addresses of some heirs, they should be named and served as defendants, and then an order of notice must be obtained as to any unknown heirs.

The CBA bylaws require this summary of the new Standard to be published in the *Connecticut Lawyer*. Following publication of this article, there will be a 60-day comment period, during which any interested party is invited to submit comments. Any such comments can be e-mailed to the com-

mittee chair at esostman@catic.com. The committee will review all comments, make any revisions it deems appropriate, and will then present the proposed Standard 19.8 to the Board of Governors for final approval and publication.

The committee has also approved revisions of Standard 6.4, Conveyances by Power of Attorney, and Standard 6.5, Deed from a Fiduciary to such Fiduciary as Grantee. Standard 6.4 in particular has undergone substantial revision to reflect the adoption of the Connecticut Uniform Power of Attorney Act in light of its changes to presumptions and powers affecting powers of attorney, and it should be carefully reviewed for those changes prior to using or accepting a power of attorney as the basis for the execution of a conveyance of real property. In addition, the revision pulls into this Standard a reference to the rule governing entities using powers of attorney discussed in Standard 28.3.

Revisions to existing standards are not subject to a comment period or Board of Governor's approval. The revised Standards 6.4 and 6.5 are now fully in effect. **CL**

Ellen L. Sostman is a Senior Title Counsel at Connecticut Attorneys Title Insurance Company, a member of the CBA's Real Property Section's Executive Committee and Chair of the Standards of Title Committee. She has been a member of the Connecticut Bar since 1975.