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September 12, 1984

ATTORNEY GENERAL OPINION NO. 84- 94

The Honorable William R. Brady
State Representative, Sixth District
1328 Grand
Parsons, Kansas 67357

Re: Personal and Real Property -- Marketable Record Title Act -- Extension of Twenty-Five Year Period; Effect on Existing Interests

Synopsis: Chapter 206 of the Laws of 1984 amends the Kansas Marketable Title Act to shorten the period in which unrecorded interests in land may exist before being extinguished from forty to twenty-five years. K.S.A. 58-3412, as amended by section 6 of chapter 206, contains an extension of two years (to July 1, 1986) for those interests terminated by the new, shorter limit which otherwise had additional time to run before being terminated by the forty year rule. Only such interests are affected, and the act does not have the effect of reviving those which have lapsed prior to July 1, 1984 under the forty year limit. A mortgage with a term of thirty years is not affected by the new, twenty-five year limit, due to the exception for mortgage interests contained in K.S.A. 58-3408(c), as amended by L. 1984, ch. 206, §5. Cited herein: K.S.A. 58-3403, 58-3406, 58-3408, 58-3412, all as amended by L. 1984, ch. 206, §§2, 4, 5 and 6.

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Dear Representative Brady:

As State Representative for the sixth district, which includes portions of Labette and Montgomery Counties, you request our opinion on

a question concerning the effect of amendments made during the 1984 legislative session to the Kansas Marketable Title Act (KMTA), K.S.A. 58-3401, et seq. That act, which was adopted in Kansas in 1973, had the effect of extinguishing interests in land older than forty years which are not recorded. In other words, if a record chain of title exists in a piece of land for forty years with no adverse claims being filed, interests arising from title transactions prior to the forty-year period are cut off, subject to a few enumerated exceptions. You inquire regarding changes made in the KMTA during the 1984 session.

1984 Senate Bill No. 346 (L. 1984, ch. 206) made a number of changes, some technical, some substantive, in the KMTA. The most important change concerns the period of time which must elapse before unrecorded interests are cut off. As amended by Section 2 of the 1984 act, K.S.A. 58-3403 now provides that a chain of title will be deemed to be unbroken if twenty-five years have passed without an adverse interest being filed. Likewise, K.S.A. 58-3406, as amended by Section 4, requires adverse interests to be recorded through the filing of a written notice in order to be preserved. Otherwise, they are of no effect, if they occurred more than twenty-five years ago. As one commentator notes:

"Generally, the Act provides all conflicting claims based upon any title transaction prior to the 40-year period are extinguished if a person has a record chain of title for forty years and no one has filed a notice of claim during the 40-year period. The passage of time does not extinguish interests preserved by possession, filing of notice or specifically identified in the muniments forming the chain of record title subsequent to the root. Specific identification means the interest must be recorded with a listing by page and volume. These claims remain until judicially eradicated but time passage lessens the likelihood of assertion." C. E. Marquardt, Kansas' Marketable Record Title Act, 13 Washburn L.J. 33, 45 (1974).

You first inquire concerning the effect of section 6 of the bill on K.S.A. 58-3412. As amended, that statute now states:

"If the twenty-five-year period specified in this act has expired prior to July 1, 1986, the period shall be extended to July 1, 1986."

You wish to know whether this statute applied only to those interests which have not been extinguished prior to July 1, 1984,

or if the amended language acts to revive, until July 1, 1986, those interests extinguished before July 1, 1984, by expiration of the forty-year period.

In construing statutes, it is a fundamental rule, to which all others are subordinate, that the purpose and intent of the legislature must govern if that intent may be ascertained from the statute. Szoboszlay v. Glessner, 233 Kan. 475 (1983). However, intent may be determined by a general consideration of the entire act. State v. Flummerfelt, 235 Kan. 609 (1984). Further, when construing statutes, it is necessary, as far as is practicable, to reconcile the different provisions "so as to make them consistent, harmonious and sensible." State ex rel. Stephan v. U.S.D. 428, 231 Kan. 579, 584 (1982).

Prior to the 1984 amendments, K.S.A. 58-3412 allowed a two-year grace period for interests to be filed before they were barred. In that no limit had existed prior to this time, as a practical matter this language went to all interests, no matter how old, and allowed them to be filed by July 1, 1975, after which time they were of no force and effect regarding the title of the property involved. In noting this result, Ms. Marquardt explains:

"A two-year extension is given for those interests expiring prior to two years after the Act's effective date. This extension should alleviate a constitutional problem of possible extinguishment without ample time for recording." 13
Washburn L.J. at 47.

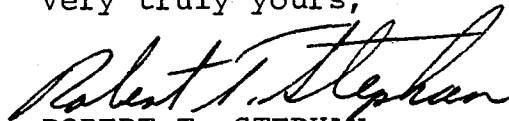
Nothing in the 1984 amendments indicates any intent on the part of the legislature to revive those interests which have previously been wiped out by operation of the forty-year rule. Rather, the amended language of K.S.A. 58-3412 applies to those interests which would still be in effect without filing under the forty-year period, but which are now eliminated by the new, shorter time. For example, an interest which dates from 1955 would previously had until 1995 to be filed, in order to be of record and so protected. But for the saving language of K.S.A. 58-3412, as of July 1, 1984 this interest is no longer valid. By allowing an extension to July 1, 1986, the legislature attempts to avoid the kind of due process denial which has been found in other statutes which impose an arbitrary cut-off on the assertion of property rights. See, e.g. Murrison v. Fenstermacher, 166 Kan. 568 (1949), Great Lakes Pipe Line v. Wetschensky, 193 Kan. 706 (1964). Accordingly, K.S.A. 58-3412 as amended applies only to interests which arose between July 1, 1944 and June 30, 1961, which would be terminated by operation of the statute prior to July 1, 1986, but which are now preserved until that date.

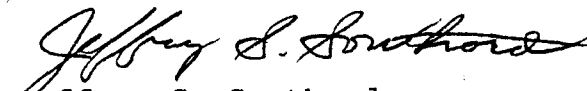
The Honorable William R. Brady
Page Four

Your second inquiry concerns the effect of the new time period upon mortgages which run for a longer time, i.e. thirty years. In our opinion, the change to a twenty-five year cut-off time will have no effect upon a mortgage which clearly expresses that it will run for a time period of more than twenty-five years. There has been an exception for mortgages in the KMTA from the outset [K.S.A. 58-3408(c)], and while section 5 of chapter 206 of the 1984 Session Laws amends the exception for mortgages, it does so only to reflect the change from the forty year to the twenty-five year limit. Only if the mortgage has no time limit expressed (an unlikely occurrence) will the twenty-five year period begin to run from the date the instrument is filed. No additional action is needed in the case of a mortgage with a term of thirty years, as the exception still applies.

In conclusion, chapter 206 of the Laws of 1984 amends the Kansas Marketable Title Act to shorten the period in which unrecorded interests in land may exist before being extinguished from forty to twenty-five years. K.S.A. 58-3412, as amended by section 6 of chapter 206, contains an extension of two years (to July 1, 1986) for those interests terminated by the new, shorter limit which otherwise had additional time to run before being terminated by the forty year rule. Only such interests are affected, and the act does not have the effect of reviving those which have lapsed prior to July 1, 1984 under the forty year limit. A mortgage with a term of thirty years is not affected by the new, twenty-five year limit, due to the exception for mortgage interests contained in K.S.A. 58-3408(c), as amended by L. 1984, ch. 206, §5.

Very truly yours,


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Jeffrey S. Southard
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RTS:JSS:crw