

On Thu, Mar 18, 2010 at 9:43

PM, John DeBruyn <jdebruyn@debruyn.com>

wrote:

Hi Connie:

Let's put this down for discussion in the statutory revision committee for April and, if that goes well, a vote in May. My one sentence solution came to mind as I was working through the provisions highlighted in blue down below in section 38-35-109(5)(c) with Diane Davies to deal with the presumption of delivery that arises upon recording of a deed and also the identification of heirs and other successors in the case of disclaimers under section 6(b)(3)(D) in conjunction with the uniform disclaimer act.

Here is the one sentence long section 38-35-109(5)(c)(VII) which is numbered to fit in after the two subparagraphs highlighted in brown below that Diane and I worked on but are a ways yet from getting into the statute books.

“(VII) If furnished by or on behalf of a person who is a successor to a trustee of a trust and the trustee and the trust are both identified by name in a conveyance of real property to the trustee, the facts establishing that the person is the successor trustee of the trust which are so named with respect to the real property that is described in the conveyance.”

38-35-109(5):

(5) (a) An affidavit, executed under penalty of perjury, stating facts enumerated under paragraph (b) of this subsection (5) and made by a person who has actual knowledge of, and is competent to testify in a court of competent jurisdiction about, the facts in such affidavit may affect the title to real property within the state and may be recorded in the office of the county clerk and recorder in the county in which the real property is situated.

(b) When recorded, an affidavit as described in paragraph (a) of this subsection (5), or a certified copy of such affidavit, shall constitute prima facie evidence of one or more of the following facts:

(I) The name, age, identity, residence, or service in the armed forces of any party;

(II) Whether the land embraced in any conveyance or any part of such land or right therein has been in the actual possession of any party or parties within the chain of title;

(III) If furnished by a registered surveyor, a statement or survey that reconciles conflicts and ambiguities in descriptions of land in recorded instruments;

(IV) A scrivener's error.

(V) IF FURNISHED BY OR ON BEHALF OF A PERSON WHO IS NAMED AS A GRANTEE IN AN INSTRUMENT OF RECORD, A STATEMENT THAT THE INSTRUMENT WAS NOT DELIVERED BY THE GRANTOR TO THE GRANTEE.

(VI)(A) IF FURNISHED BY OR ON BEHALF OF AN INDIVIDUAL MAKING A DISCLAIMER OF RECORD WHICH DISCLAIMER IS AUTHORIZED BY SECTION (NUMBER TO BE ASSIGNED TO WHAT IS PROPOSED SECTION 6(B)(3)(D) OF THE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT) AND REQUIRED TO BE RECORDED BY SECTION (PROPOSED SECTION 12(M)), A STATEMENT THAT THE INDIVIDUAL HAS OR DOES NOT HAVE A DESCENDANT LIVING AT THE TIME OF DISTRIBUTION FOR PURPOSES OF SUCH SECTION AND THE NAMES AND RELATIONSHIPS TO THE INDIVIDUAL OF SUCH DESCENDANT AND ANY OTHER DESCENDANTS ENTITLED TO TAKE UNDER SUCH SECTION.

(B) IF FURNISHED BY OR ON BEHALF OF THE GRANTOR OF THE CONVEYANCE TO THE INDIVIDUAL MAKING SUCH A DISCLAIMER OF RECORD AND AN AFFIDAVIT OF RECORD WITH SUCH A STATEMENT THAT THE INDIVIDUAL DOES NOT HAVE DESCENDANT'S LIVING AT SUCH TIME, A STATEMENT, THE NAMES AND RELATIONSHIPS TO THE TRANSFEROR OF ALL OF THE PERSONS WHO ARE THE HEIRS OF THE GRANTOR ENTITLED TO TAKE UNDER SECTION (PROPOSED SECTION 6(B)(3)(D)(II) AND (III)).

(VII) IF FURNISHED BY OR ON BEHALF OF A PERSON WHO IS THE SUCCESSOR AS TRUSTEE OF A TRUST WITH RESPECT TO REAL PROPERTY DESCRIBED IN A CONVEYANCE TO A TRUSTEE WHICH TRUST IS IDENTIFIED BY NAME, A STATEMENT OF THE FACTS ESTABLISHING THAT THE PERSON IS SUCH SUCCESSOR TRUSTEE OF THE TRUST WITH RESPECT TO THE REAL PROPERTY THAT IS SO DESCRIBED.

(c) An affidavit filed under this subsection (5) shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include a description of the land, the title that may be affected by facts stated in such affidavit, a reference to an instrument of record containing such description, the name of the person appearing by the record to be the owner of such land at the time of the recording of the affidavit, and an acknowledgment that the affiant is testifying under penalty of perjury. The recorder shall index the affidavit in the name of the record owner.