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REAL PROPERTY, REGISTERED UNDER TORRENS LAW, § 5309.01 *et seq.*, RC—TRANSFEEE CAN OBTAIN A DUPLICATE CERTIFICATE, § 5309.43 RC—WITHDRAWAL OF LANDS, § 5309.68 RC—DUPLICATE CERTIFICATE NEED NOT BE BROUGHT UP TO DATE IN ORDER TO WITHDRAW LANDS.

SYLLABUS:

1. A present owner, as transferee by deed of lands registered as provided in Chapter 5309., Revised Code, can obtain a duplicate certificate of title thereto by requesting the county recorder to make such a disposition under the authority of Section 5309.43, Revised Code.

2. The duplicate certificate of title which must be surrendered by the present owner as a condition precedent to withdrawal of lands from registration, as required by Section 5309.68, Revised Code, need not be brought up to date by the last preceding holder of such a duplicate certificate, or by any of the intermediate owners to whom such lands were transferred by deed, in order for the present owner to obtain such in his own name.

Columbus, Ohio, December 27, 1957

Hon. Robert O. Stout, Prosecuting Attorney
Marion County, Marion, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

"In Marion County, we have lots and tracts that are registered under the Torrens Law. On one particular tract, the last or Duplicate Certificate of Title was issued in 1929. However, since that time there have been three transfers of the tract by Deed, which deeds were recorded in the regular Deed Records of the County, but at which times no Duplicate Certificates of Title were issued to the owners under the Torrens Law. Thus, the present owner of the tract by deed, being the third successive transferee of the tract since 1929, has no Duplicate Certificate of Title in his possession.

"Under Amended Revised Code 5309.29 and 5309.68, it is now possible to cancel registration of lands under the Torrens Law. Concerning the above specific tract referred to, it is necessary that the last Certificate of Title (1929) for this tract be brought up to date by the prior owners or the present owner before the Recorder may or shall accept the present owner's Affidavit of Intention to withdraw the tract from registration.

* * *

The Act of May 6, 1913, 103 Ohio Laws 914, known as the "Registration of Land Titles Act" incorporated the provisions of the so-called Torrens System of land registration into Ohio law. This act, which was formerly codified in Section 8572-1, *et seq.*, General Code, is today re-enacted in Chapters 5309., and 5310., Revised Code. This system was adopted to provide a means whereby the validity of land titles could be clearly and confidently determined, with a minimum of time and expense. The use of this system is entirely optional. An owner desiring to bring his real estate under the provisions of this system is required to initiate

an application for an original proceeding under the provisions of Section 5309.08, *et seq.*, Revised Code. However, when an original registration has been completed, and an original certificate of title issued, both the owner and his successors in title are bound by the provisions of Section 5309.29, Revised Code, as amended, which provides in pertinent part:

“The obtaining of a decree of registration and receiving a certificate of title is an agreement running with the land that the land shall, unless the owner complies with the provisions of section 5309.68, of the Revised Code, remain registered land and be subject to sections 5309.02 to 5310.21, inclusive, of the Revised Code. Such agreement is binding on the applicant and the successors in title. *All dealings with the land* or any interest therein, after such land has been brought under such sections, * * * *shall be made only subject to such sections.*”

(Emphasis added.)

The above language clearly indicates the legislature's intention to provide that prior to any cancellation of registration, as provided in Section 5309.68, Revised Code, all owners of registered realty were to comply with the procedures specified in this act. The transfer of registered real estate by deed, without any corresponding registration of the conveyance, is governed by Section 5309.40, Revised Code, which reads in part as follows:

“A registered owner in fee of real property in order to transfer his whole interest in such property or in any part thereof * * * shall execute to the intended transferee a deed or instrument of conveyance * * * in any form authorized by law. * * * Before a transfer can be registered, the transferor or the transferee must deliver to the recorder the duplicate certificate of title of the transferor, * * *.”

It will be observed that while this section permits a registered land owner to alienate his real property “in any form authorized by law,” it also specifically requires the submission of the duplicate certificate of title before any of the processes of registration will be made effective. This submission of the duplicate certificate of title is consistently prescribed in various provisions of Chapter 5309, Revised Code, before registration can be invoked. In particular, Section 5309.68, Revised Code, as amended effective August 27, 1957, provides:

“Any person owning real estate, the title to which is registered, may request the withdrawal of such real estate from registration by presenting to the county recorder an affidavit of

intention to withdraw. The affidavit shall describe the real estate, shall be properly executed and signed, *and shall have attached to it the owners duplicate certificate of title.* Thereupon the county recorder shall register or record the affidavit and upon order of the court, cancel said certificate of record, and thereafter said title shall be considered the same as other unregistered lands. * * *.”

(Emphasis added)

It is at once evident that this requirement of presenting to the recorder a duplicate certificate of title is not an incidental matter but is essential to the efficient operation of the entire registration system. This is exemplified by the fact that under the provisions of Section 5309.25, Revised Code, the original certificate of title is retained by the recorder and *only* the “duplicate” is delivered to the owner. Further, since Section 5309.78, Revised Code, which concerns the right to have a duplicate brought up-to-date, applies only to “holders” of such duplicates, it would seem consistent to conclude that a present owner of registered lands could be a “holder” only if he obtained possession of such a duplicate from the former owner.

However, the statutory language of Chapter 5309., Revised Code, suggests alternative procedures by which a present owner of registered lands can obtain an up-to-date duplicate certificate of title issued in his name. Section 5309.43, Revised Code, provides that:

“If the *county* recorder is in doubt upon any question, or if any person in interest does not agree as to the proper memorandum to be made in pursuance of any deed, mortgage, or other voluntary instrument presented for registration, the question may, on the certificate of the recorder stating the question upon which the *recorder* is in doubt or *upon which* the person in interest does not agree, be referred to the *court* of common pleas for decision. The court, after notice to all parties and a hearing, shall enter an order directing the action of and prescribing the form of memorandum to be made by the recorder, * * *.”

“*The recorder may refer such question* to an examiner of titles, and upon receipt of his report thereon the recorder shall *notify the parties interested and fix a time for hearing.* *The recorder* shall on such hearing make such disposition of said question as to *him* seems just and proper and in accordance with law.”

(Emphasis added.)

This section clearly gives to the recorder the authority to either dispose of any question arising under land title registration, by use of

his own discretion, or refer such questions to the court of common pleas. It would appear that the only limitation upon the recorder's discretion is that his disposition of the question be to *him* "just and proper and in accordance with law." Consequently, it seems reasonable to assert that the recorder, or the common pleas court, must have the authority to permit a *bona fide* owner of registered land, who is unable to obtain a duplicate certificate of title from his transferor, to obtain a certified copy of such a certificate, or to have an original certificate of title issued in his own name.

With reference to the question of whether such a disposition would be a reasonable use of discretion, I invite your attention to two analogous sections of Chapter 5309., *supra*, which provide as follows:

Section 5309.31, Revised Code, which governs lost or destroyed certificates of title, provides:

"* * * If the recorder is satisfied as to the truth of such affidavit, and the bona fides of the transaction, *he* shall issue to the owner a certified copy of the original certificate, * * *, and shall also mark such certified copy 'owner's certified copy issued in the place of lost (or destroyed as the case may be) duplicate certificate.' Such certified copy shall stand in the place of and have like effect as the missing certificate."

Section 5309.52 Revised Code, which governs the release or discharge of encumbrances, provides:

"* * * If the encumbrancer, * * * fails to file such satisfaction or release * * * or if such satisfaction or release has been delivered to the encumberer or transferor and became lost or destroyed or from any other cause cannot be produced, then the encumberer * * * may present proof of the same before the recorder * * *. When the recorder is convinced that such mortgage * * * has been satisfied * * * he shall enter such * * * on the instrument on file with him or the record thereof, *if recorded*, and indorse the same upon the registered and also on the owner's duplicate certificate of title; * * *"
(Emphasis added)

From the foregoing sections it would seem that the spirit of the act permits the issuance of original or duplicate certificates of title to *bona fide* parties who can succeed in proving their interest in the land in question. I therefore conclude that such a disposition would be fully warranted under the provisions of this act.

Accordingly, in specific answer to your query, it is my opinion:

1. A present owner, as transferee by deed of lands registered as provided in Chapter 5309., Revised Code, can obtain a duplicate certificate of title thereto by requesting the county recorder to make such a disposition under the authority of Section 5309.43, Revised Code.

2. The duplicate certificate of title which must be surrendered by the present owner as a condition precedent to withdrawal of lands from registration, as required by Section 5309.68, Revised Code, need not be brought up to date by the last preceding holder of such a duplicate certificate, or by any of the intermediate owners to whom such lands were transferred by deed, in order for the present owner to obtain such in his own name.

Respectfully,
WILLIAM SAXBE
Attorney General