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## An Analysis of Recent Illinois Legislation Concerning Seals

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## COMMENTS

### AN ANALYSIS OF RECENT ILLINOIS LEGISLATION CONCERNING SEALS

An ancient requirement of the law of real property has been ended in Illinois. In July, 1951, the legislature passed two acts which together terminate the necessity for a private seal on deeds, mortgages and all other written instruments executed after July 11, 1951. The first act amended the Conveyances chapter of the Illinois statutes by eliminating all references to seals appearing in the forms for deeds and acknowledgments.<sup>1</sup> These amendments might be said to have ended the statutory requirements of a private seal.<sup>2</sup>

The second act reads as follows:

An Act to abolish the need for private seals on written contracts, deeds, mortgages or any other written instruments or documents.

The use of private seals on written contracts, deeds, mortgages or any other written instruments or documents heretofore required by law to be sealed, is hereby abolished, but the addition of a private seal to any such instrument or document shall not in any manner affect its force, validity or character, or in any way change the construction thereof.<sup>3</sup>

Prior to these enactments, an unsealed conveyance would not pass legal title,<sup>4</sup> although the rule as to what constituted a sealed instrument had been relaxed.<sup>5</sup> In most cases, an unsealed conveyance passed equitable title.

<sup>1</sup> Ill. Rev. Stat. (1951) c. 30, Section 1 was amended by removing the words "and sealed" from the phrase "signed and sealed." The seal was removed from the forms of warranty deed, quitclaim deed and mortgage in sections 8, 9 and 10. The word "sealed" was removed from the phrase "signed, sealed, and delivered" in section 25.

<sup>2</sup> There is some doubt as to the existence of a statutory necessity. Some authorities say the answer depends upon whether Section 1 of Chapter 30 sets up the only permissible form of deed. If the requirement of livery of seisin were not binding, a bargain and sale deed working by way of the Statute of Uses would not need a seal. Kales, *Future Interests* § 150 (1905). *Necessity and Effect of the Private Seal in Illinois, 1949* Ill. Law F. 131, 136 n. 23.

<sup>3</sup> Ill. Rev. Stat. (1951) c. 30, § 153b. The statute does not have any retroactive effect.

<sup>4</sup> *Shadden v. Zimmerlee*, 401 Ill. 118, 81 N.E. 2d 477 (1948); *Wilson v. Kruse*, 270 Ill. 298, 110 N.E. 359 (1915).

<sup>5</sup> Several statutory enactments attempted to ease the requirement. Sections 154 and 155 of Chapter 30 establish the validation of instruments to Illinois land executed outside the state and without a seal, but valid where executed. Sections 34a and 34b of Chapter 30 say that deeds and mortgages executed prior to 1941 without a seal are validated and that any deeds executed from that time are valid as long as there is a recital of sealing present and some seal affixed, even if it be a public one. The words of 34b do not in terms cover mortgages, so there may be some question about their

While the second statute seems to have been enacted to end the common law necessity for a seal, it has been flatly stated that the "long history of the private seal on written instruments comes to a close."<sup>7</sup> It is very doubtful, however, that this recent legislation was intended or can be construed to deprive the seal of all its common law effect. Statutes in derogation of the common law receive strict construction, as is well known. Courts are not fond of abandoning common law rules of long standing, generally recognized and observed by the bar, without very clear expressions by the legislature that such an abandonment is the will of the General Assembly.

Apart from its magical effect in making a written instrument effective as a conveyance of realty,<sup>8</sup> the seal has had other peculiar potencies developed in its long common law history. Some of the more commonly encountered common law effects of the seal are seen in the rules: that a seal on a contract or other instrument (such as a release or a covenant not to sue) "imports" consideration;<sup>9</sup> that a deed may operate as a gratuitous transfer of personalty without the otherwise necessary delivery of the subject matter of the gift;<sup>10</sup> that if an agent is to execute a sealed instrument in his principal's name, the authority of the agent must itself be set forth in a sealed instrument of authorization;<sup>11</sup> that official bonds be signed

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validity when unsealed between then and this act. Also, some objections to the wording of section 34a have been noted. *Necessity and Effect of the Private Seal in Illinois*, 1949 Ill. Law F. 131. This act should remedy the situation from its passage forward. Some questions may still remain as to the validity of deeds and mortgages executed prior to this act. Illinois' position is also discussed in *Kagy and Walker, Significant Aspects of the Deed*, 1949 Ill. Law F. 455.

<sup>6</sup> *Ross v. Ross*, 406 Ill. 508, 94 N.E. 2d 885 (1950); *Shadden v. Zimmerlee*, 401 Ill. 118, 81 N.E. 2d 477 (1948).

<sup>7</sup> *Britton, Abolition of Seals*, 40 Ill. Bar J. 43 (1951). *Jones Illinois Annotated Statutes* places the statute in the Contracts chapter rather than the Conveyances chapter. *Jones Ill. Stat. Ann.* (1951) c. 28.07; *Smith-Hurd Illinois Annotated Statutes*, in an historical note refers to this statute as an act to amend an act in regard to contracts under seal, and relating to real estate, while actually it is an act to amend an act concerning conveyances. *Smith-Hurd Ill. Stat. Ann.* (1951) c. 29, § 1.

<sup>8</sup> A corporate seal is necessary on a deed to pass title. *Danville Seminary v. Morr*, 136 Ill. 289, 28 N.E. 54 (1891). The statement in *B.S. Green Co. v. Blodgett*, 159 Ill. 169, 42 N.E. 176 (1895), that a corporation may bind itself by an instrument not under seal to the same extent as any individual, must be distinguished today.

<sup>9</sup> *Lawrence v. Muter Co.*, 171 F. 2d 380 (C.A. 7th, 1949), cert. denied *Metropolitan Trust Co. v. Muter Co.*, 337 U.S. 907 (1949); *Kaiser v. Cobbe*, 400 Ill. 214, 79 N.E. 2d 604 (1948); *Davis v. Glendinning*, 232 Ill. App. 583 (1924) (deed); *Rendleman v. Rendleman*, 156 Ill. 568, 41 N.E. 223 (1895) (deed); *First Nat. Bank v. Davis*, 146 Ill. App. 462 (1909) (mortgage).

<sup>10</sup> *Cochrane v. Moore*, 25 Q.B.D. 57, 59 L.J.Q.B. 377 (C.A., 1890); *Brown, Personal Property* § 46 (1936).

<sup>11</sup> *Yost v. Eckart*, 209 Ill. App. 30 (1918); *Watson v. Sherman*, 84 Ill. 263 (1876); *Rest., Agency* § 28 (1933); *Necessity and Effect of the Private Seal in Illinois*, 1949 Ill. Law F. 131, 139.

and sealed by the person holding the office or position.<sup>12</sup>

Any construction that would do away with the common law effect of a seal may not be justified by the language of the statute. The title of the act specifically states that the *need* for private seals is being abolished. A reading of the first clause of the statute reveals that whatever prohibition is declared therein applies only to written instruments heretofore required by law to be sealed. But few contracts must be sealed, so as to all others, at least, a seal will still import consideration. No reason is apparent why the legislature should have refused to allow a seal on a deed to import consideration, while leaving untouched the vast majority of contracts. A more reasonable explanation would be that the legislature was abolishing the strictly formal requirement that certain instruments be sealed to be operative.

The second clause of the statute, by using the word "but" instead of "and" as a connective, seems to explain the first clause, rather than add new material. Thus, the statement that "the addition of a private seal to any such instrument or document shall not in any manner affect its force, validity or character, or in any way change the constitution thereof" does not seem to mean that the seal will not import consideration, but rather that the seal will not render the instrument inoperative, or be evidence of intent, or determine the nature of the instrument.

A construction of the statute that would destroy the common law effect of a seal may be objectionable on constitutional grounds. Section 13 of Article IV of the Illinois Constitution provides that no act shall embrace more than one subject, which subject shall be contained in the title.<sup>13</sup> Any subject not expressed in the title is void. It has been decided that the full title must be considered when inquiring whether a title includes a certain subject.<sup>14</sup> The full title of this statute reads: "An Act to abolish the need for private seals on written contracts, deeds, mortgages or any other written instruments or documents." Mention is made of the need for a seal, but nothing is said about the effect of using a seal. Consequently, the statute seems to eliminate the formality of a seal on conveyances and other instruments but does not alter the common law effect of a seal.<sup>15</sup>

<sup>12</sup> Ill. Rev. Stat. (1951) c. 103, § 1.

<sup>13</sup> Ill. Const. Art. IV, § 13: "No Act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in the title, such Act shall be void only as to so much thereof as shall not be so expressed."

<sup>14</sup> Franklin County Coal Co. v. Ames, 359 Ill. 178, 194 N.E. 268 (1935).

<sup>15</sup> A very recent comment maintains that specialties no longer exist in Illinois as a result of the recent legislation. No analysis or reasoning is given. Grigsby, Private Seals Abolished, 40 Ill. Bar J. 383 (1952).