

AN OVERVIEW OF
SELECTED TITLE INSURANCE ISSUES
IN OKLAHOMA

PRESENTED BY:

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OKLAHOMA ASSOCIATION OF PROFESSIONAL MORTGAGE WOMEN
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PRACTICE: Real Property Litigation (Quiet Title Suits, Lien Priorities, Foreclosures);
Real Estate Acquisitions (Contracts, Title Exam, Leases, Rezoning & Special
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EDUCATION: University of Oklahoma [B.A. (PoliSci-Urban Admin.) 1971];
State Univ. of N.Y. at Stony Brook [M.S. (Urban and Policy Sciences) 1974];
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MEMBERSHIPS: Oklahoma Bar Association.

POSITIONS: OBA Title Examination Standards Committee (current Chairperson);
ABA Conveyancing Committee (current Title Standards Project Chairperson);
OBA Real Property Law Section (current member, former Chairperson);
Oklahoma City Real Property Lawyers Assn. (current member, former
President);
Oklahoma City Commercial Law Attorneys Assn. (current member);
OBA/net Section Leader: Supervising Real Estate "Bulletin Board"; and
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SPECIAL EXPERIENCE: Previously served as Commercial Loan Closer and Title Examiner for Lawyers
Title of OKC, and as General Counsel for American First Land Title
Insurance Company (now American Guaranty Title);
Oklahoma City University School of Law adjunct professor: "Oklahoma Land
Titles" course (1982-present);
Oklahoma Bar Review faculty: Real Property (June 1998 & Feb. 1999);
"*Basys on Clearing Land Titles*", Author: 1998 Pocket Part Update; and
Oklahoma Association of Realtors Institute instructor: "Title Insurance" and
"Avoiding Title Pitfalls" (May & Oct. 1998).

SELECTED PUBLICATIONS: "*Have Judgment Lien Creditors Become 'Bona Fide Purchasers'?*", 68
Oklahoma Bar Journal 1071 (March 29, 1997)*;
"*An Attack by the State Auditor on the '30-Year Abstract'*", 68 Oklahoma Bar
Journal 517 (February 22, 1997);
"*Mortgage Lenders Must Now Secure Two Judgments to Enforce Their Real
Estate Mortgage*", 87 Oklahoma Banker 11, No.1 (January 3, 1997); and
"*Tax Resales: Invisible and Invincible Liens That May Be Surviving The Sale*",
66 Oklahoma Bar Journal 2638 (September 9, 1995).

SPECIAL HONORS: *Okla. Bar Assn. 1997 Maurice Merrill *Golden Quill Award*;
Okla. Bar Assn. 1990 Earl Sneed *Continuing Legal Education Award*;
Okla. Bar Assn. 1990 Golden Gavel Award: *Title Examination Standards
Committee*;
Who's Who In America, 50th through 53rd Editions (1996-1999); and
Who's Who in American Law, Sixth through Tenth Editions (1990-1999).

1. WHAT IS "TITLE INSURANCE"?

"'TITLE INSURANCE' IS INSURANCE OF OWNERS OF PROPERTY OR OTHERS HAVING AN INTEREST THEREIN, OR LIENS OR ENCUMBRANCES THEREON, AGAINST LOSS BY ENCUMBRANCE, OR DEFECTIVE TITLE, OR INVALIDITY, OR ADVERSE CLAIM TO TITLE." [36 O.S. SECTION 709]

2. WHAT IS A "TITLE INSURANCE POLICY"?

"A 'TITLE INSURANCE POLICY' IS ANY WRITTEN INSTRUMENT PURPORTING TO SHOW THE TITLE TO REAL OR PERSONAL PROPERTY OR ANY INTEREST THEREIN OR ENCUMBRANCE THEREON, OR TO FURNISH SUCH INFORMATION RELATIVE TO REAL PROPERTY, WHICH WRITTEN INSTRUMENT IN EXPRESS TERMS PURPORTS TO INSURE OR GUARANTEE SUCH TITLE OR THE CORRECTNESS OF SUCH INFORMATION." [36 O.S. SECTION 5004]

3. WHO CAN "COUNTERSIGN" TITLE INSURANCE POLICIES?

"B. A PERSON ENGAGED IN THE BUSINESS OF PREPARING OR ISSUING ABSTRACTS OF, BUT NOT GUARANTEEING OR INSURING, TITLE TO PROPERTY, OR A PERSON ACTING ONLY AS AGENT FOR A TITLE INSURER, SHALL NOT BE DEEMED TO BE A TITLE INSURER.

"C. EVERY POLICY OF TITLE INSURANCE OR CERTIFICATE ISSUED BY ANY COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE SHALL BE COUNTERSIGNED BY SOME PERSON, PARTNERSHIP, CORPORATION OR AGENCY ACTIVELY ENGAGED IN THE ABSTRACT OF TITLE BUSINESS IN OKLAHOMA AS DEFINED AND PROVIDED IN TITLE 1 OR BY AN ATTORNEY LICENSED TO PRACTICE IN THE STATE OF OKLAHOMA EXCEPT AFTER EXAMINATION OF A DULY-CERTIFIED ABSTRACT OF TITLE PREPARED BY A BONDED AND LICENSED ABTRACTOR AS DEFINED HEREIN." [36 O.S. SECTION 5001 (B) & (C)]

"THE FUNCTION OF MAKING A TITLE INSURANCE COVERAGE DECISION, BASED UPON THE TITLE OPINION OF A LICENSED ATTORNEY, IS THE 'COUNTERSIGNATURE' FUNCTION." [INSURANCE DEPARTMENT RULE 365:20-3-3 (A)(3)]

4. WHAT ARE THE LIMITATIONS ON THE BUSINESS OF A TITLE INSURER?

"4. A TITLE INSURER SHALL BE A STOCK INSURER AND SHALL NOT TRANACT ANY OTHER KIND OF INSURANCE." [36 O.S. SECTION 609]

"A TITLE INSURER MAY ENGAGE IN SUCH OTHER BUSINESS NOT INCONSISTENT WITH THE BUSINESS OF ISSUING TITLE INSURANCE POLICIES AS MAY BE AUTHORIZED BY ITS CORPORATE CHARTER." [36 O.S. SECTION 5003]

5. WHAT ARE THE LIMITATIONS ON LENDERS DIRECTING TITLE INSURANCE?

"(A) NO SELLER OF PROPERTY THAT WILL BE PURCHASED WITH THE ASSISTANCE OF A FEDERALLY RELATED MORTGAGE LOAN SHALL REQUIRE DIRECTLY OR INDIRECTLY, AS A CONDITION TO SELLING THE PROPERTY, THAT TITLE INSURANCE COVERING THE PROPERTY BE PURCHASED BY THE BUYER FROM ANY PARTICULAR TITLE COMPANY.

"(B) ANY SELLER WHO VIOLATES THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION SHALL BE LIABLE TO THE BUYER IN AN AMOUNT EQUAL TO THREE TIMES ALL CHARGES MADE OF SUCH TITLE INSURANCE." [12 USCA SECTION 2608]

"MULTIPLE SERVICES. WHEN A PERSON IN A POSITION TO REFER SETTLEMENT SERVICE BUSINESS, SUCH AS AN ATTORNEY, MORTGAGE LENDER, REAL ESTATE BROKER OR AGENT, OR DEVELOPER OR BUILDER, RECEIVES A PAYMENT FOR PROVIDING ADDITIONAL SETTLEMENT SERVICES AS PART OF A REAL ESTATE TRANSACTION, SUCH PAYMENT MUST BE FOR SERVICES THAT ARE ACTUAL, NECESSARY AND DISTINCT FROM THE PRIMARY SERVICES PROVIDED BY SUCH PERSON. FOR EXAMPLE, FOR AN ATTORNEY OF THE BUYER OR SELLER TO RECEIVE COMPENSATION AS A TITLE AGENT, THE ATTORNEY MUST PERFORM CORE TITLE AGENT SERVICES (FOR WHICH LIABILITY ARISES) SEPARATE FROM ATTORNEY SERVICES, INCLUDING THE EVALUATION OF THE TITLE SEARCH TO DETERMINE THE INSURABILITY OF THE TITLE, THE CLEARANCE OF UNDERWRITING OBJECTIONS, THE ACTUAL ISSUANCE OF THE POLICIES ON BEHALF OF THE TITLE INSURANCE COMPANY, AND, WHERE CUSTOMARY, ISSUANCE OF THE TITLE COMMITMENT, AND THE CONDUCTING OF THE TITLE SEARCH AND CLOSING." [RESPA REGULATIONS 3500.14(f)(3)]

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