

**A STATUS REPORT:
ON-LINE IMAGES AND E-FILING OF LAND
DOCUMENTS
IN TULSA AND OKLAHOMA COUNTIES
AND BEYOND**

BY:

**KRAETTLI Q. EPPERSON
ATTORNEY-AT-LAW**

**ROLSTON, HAMILL, EPPERSON, MYLES & NELSON
4334 N.W. EXPRESSWAY, SUITE 174
OKLAHOMA CITY, OKLAHOMA 73116**

PHONE: (405) 840-2470

FAX: (405) 843-4436

E-mail: kqelaw@aol.com

Webpage: www.eppersonlaw.com

Presented to

**THE OKLAHOMA CITY COMMERCIAL LAWYERS
ASSOCIATION**

On: December 21, 2004, In

Oklahoma City, Oklahoma

ATTORNEY AT LAW

- POSITION:** Associated with: Rolston, Hamill, Epperson, Myles & Nelson
4334 N.W. Expressway, Suite 174, Oklahoma City, OK 73116
Voice: (405) 840-2470; Fax: (405) 843-4436
E-mail: kqelaw@aol.com; website: www.eppersonlaw.com
- PRACTICE:** Real Property Litigation (Condemnation, Specific Performance, Residential Condition Disputes, Quiet Title Suits, and Lien Priorities);
Condo/HOA Representation;
Real Estate Acquisitions (Contracts, Title Exams, Leases, Rezoning);
Civil/Commercial Mediation.
- 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]; &
Oklahoma City University [J.D. (Law) 1978].
- MEMBERSHIPS/POSITIONS:**
OBA Title Examination Standards Committee (Chairperson: 1992-Present);
OBA Title Standards Project (Chairperson: 1989 - Present);
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);
BSA: Assistant Scoutmaster, Troop 193, All Souls Episcopal Church; Vice Chair & Chair, Baden-Powell District, Last Frontier Council (2000-Present)
- SPECIAL EXPERIENCE:**
Oklahoma City University School of Law Adjunct Professor of Law:
"Oklahoma Land Titles" course (1982 - Present);
Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor and Contributing Author;
Oklahoma Bar Review faculty: "Real Property" (June 1998 - 2003);
Base on Clearing Land Titles, Author : Pocket Part Update (1998 – 2000);
Contributing Author: Pocket Part Update (2001-Present)
- SELECTED PUBLICATIONS:**
"Real Estate Homesteads in Oklahoma: Conveying and Encumbering Such Interest", 75 The Oklahoma Bar Journal 1357 (May 15, 2004)
"Have Judgment Lien Creditors Become 'Bona Fide Purchasers'?", 68 Oklahoma Bar Journal 1071 (March 29, 1997)*;
"Tax Resales: Invisible and Invincible Liens That May Be Surviving The Sale", 66 Oklahoma Bar Journal 2638 (September 9, 1995); and
"Federal Money Judgment Liens Under The Federal Debt Collection Procedure Act: A 40-Year Super-Lien", 47 Consumer Finance Law Quarterly Report 352 (Fall 1993)
- 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: The World, America, American Law, American Education, and The South & Southwest

TABLE OF CONTENTS

AUTHOR'S RESUME

INTRODUCTION

I. HOW TO ACCESS ON-LINE IMAGES OF LAND DOCUMENTS

- A. IMAGES IN OKLAHOMA COUNTY
- B. IMAGES IN TULSA COUNTY

II. WHERE WE ARE GOING NEXT

- A. COURT FILINGS BY ELECTRONIC MEANS
- B. E-FILING OF LAND DOCUMENTS IN OKLAHOMA
 - 1. INTRODUCTION
 - 2. OKLAHOMA COUNTY
 - 3. TULSA COUNTY
 - 4. GENERAL LAWS IN EFFECT

APPENDICES:

- 1. SCREENS: ON-LINE ACCESS TO IMAGES IN OKLAHOMA COUNTY
- 2. SAMPLE SCREENS: ON-LINE ACCESS TO IMAGES IN OKLAHOMA COUNTY
- 3. SUBCOMMITTEE GOALS: ELECTRONIC FILING OF LAND RECORDS
- 4. ENABLING LEGISLATION: HB2195 (EFFECTIVE NOV. 1, 2004)
- 5. SLIDES: ELECTRONIC RECORDING
- 6. SCREENS: UCC ON-LINE FILING IN OKLAHOMA COUNTY
- 7. OKLAHOMA UETA (12A O.S.§15-101 ET SEQ)

INTRODUCTION

The purpose of this paper is to share with you information on several matters which will inevitably affect your real estate practice, including: (1) How can you access real property information and images of documents available on-line (e.g., from the Oklahoma County Clerk)? and (2) What are the next related steps regarding e-imaging, and e-filing of land documents that we can expect (e.g., in Oklahoma County)?

There are efforts underway across the State concerning these same issues. This author is eager to learn about each county's experiences, so that such information can be shared statewide. You are encouraged to send e-mail to the author at kqelaw@aol.com and to visit his website at www.eppersonlaw.com. The information provided herein is primarily from Oklahoma County, although Tulsa County is also active in imaging and in e-filing efforts.

I. HOW TO ACCESS ON-LINE IMAGES OF LAND DOCUMENTS

A. IMAGES IN OKLAHOMA COUNTY

From April 1991 through the current date all real property documents which have been filed in the office of the Oklahoma County Clerk (currently Carolyn Caudill) have been scanned and stored in digital image form, rather than being photocopied and stored as hard copies in books. From May 1994 through the present time, the indexes for accessing the documents (both grantor/grantee and tract) have also become computerized and are no longer kept – on a go-forward basis – in paper form.

Starting in April 1999, whenever an original real property document was handed to the county clerk's staff at the counter for filing, the document was not kept but was immediately scanned into digital form and the original was returned to the waiting

customer. The returned document included appropriate recording information printed on its face. If the document was received by mail, it was scanned and stamped, and the original was promptly mailed back.

These initial steps resulted in the reduction of those Clerk's expenses which related (a) to the cost of space and supplies arising from preparing, storing and maintaining increasing numbers of hard copies of documents and paper indexes, and (b) to salaries and postage for processing and mailing back original documents.

Both the indexes and the images of the documents had been available on the computers located in the County Clerk's office since May 1994, which is the date that the Clerk stopped adding paper copies of documents and indexes to the system. As of August 1998, the County Clerk made the indexes available on-line to remote users through the County-wide website. (see: www.oklahomacounty.org >>then select>> "Mortgages/Deeds") However, such remote on-line information did not include an image of any documents, which document images could only be accessed on the publicly-accessible computers physically located in the County Clerk's own office.

The newest step which has recently been taken by the Oklahoma County Clerk is the addition of the digital images of all documents (post-1991) to the indexing information already available remotely on-line. These images became available on May 27, 2004. The pre-1991 images and indexes are being added to the system through a third-party vendor contract, and they should be available by June 30, 2005 (i.e., all the way back to "Book 1").

The process that an attorney or other interested party can use to review the on-line index and to look at the on-line document images is described below. It should be noted

that -- at this stage -- while the images of the documents can be viewed and can be printed on your own remote computer, (according to Oklahoma County Clerk Carolyn Caudill) there are unanswered questions about the legality of providing “official” or “certified” copies without charging for them. Therefore, the copy that you can save or print on your own computer will include the words “NOT AN OFFICIAL COPY” stamped across the face of each document page. While the copies are certainly adequate to review and to place in one’s file, one will still have to go to the County Clerk’s office and pay for a “certified copy”. The County Clerk’s office wants to develop a means whereby a certified copy can be provided electronically, now that the clarifying legislation included in HB 2195 went into effect November 1, 2004.

These images are available on-line at www.oklahomacounty.org/landrecords. Because this system is new, there will certainly be software and data “glitches” to be identified and remedied. The Oklahoma City Real Property Lawyers Association and the OBA Real Property Law Section Title Examination Standards Committee were enlisted to be among the early testers of this new on-line imaging system to provide prompt professional feedback. In order to assist with the “problem identification” process, you are encouraged to note any problems and then contact Brett Maughan at (405) 713-2333 or e-mail him at ccbremau@oklahomacounty.org. Thereafter, the County Clerk’s staff can work on the “problem remediation” process.

Oklahoma County has entered into a software sharing agreement with Oklahoma State University to allow OSU to facilitate the sharing of the software that Oklahoma County developed for imaging their documents. Such sharing with other county clerks will reduce the cost for smaller counties to begin imaging their documents.

ACCESSING THE IMAGES ON-LINE IN OKLAHOMA COUNTY: 1, 2, 3, 4 & 5:

STEP 1: ACCESS YOUR ON-LINE SERVICE AND TYPE IN:

WWW.OKLAHOMACOUNTY.ORG/LANDRECORDS.

STEP 2: ON THE “LOG-IN” PAGE, ENTER YOUR USER NAME AND YOUR PASSWORD, IF YOU HAVE USED THIS SYSTEM BEFORE, OR ENTER YOUR USER NAME AND CREATE AND ENTER YOUR PASSWORD, AND, CLICK ON “CREATE A NEW ACCOUNT”, AND, ON THE NEXT SCREEN, ENTER THE REQUESTED INFORMATION TO CREATE YOUR ACCOUNT. THE ACCOUNT IS SELF-CREATING AND THERE IS NO CHARGE TO USE THE SYSTEM.

STEP 3: THEREAFTER, REVIEW AND CLICK THROUGH THE NEXT TWO SCREENS TO PICK THE DEPARTMENT (“REGISTRAR OF DEEDS PUBLIC ACCESS”), AND TO PICK THE SEARCH CRITERIA (“GRANTOR/GRANTEE OR SUBDIVISION”, OR “GRANTOR/GRANTEE OR UNPLATTED”, OR “SEARCH BY DOCUMENT NUMBER”, OR “SEARCH BY BOOK AND PAGE”).

STEP 4: ON THE NEXT SCREEN FILL IN THE REQUESTED SEARCH INFORMATION, AND, THEN, IF THE NEXT SCREEN PROVIDES MULTIPLE NAMES TO CHOOSE AMONG, CLICK ON THE APPROPRIATE NAMES, TO NARROW THE SEARCH.

STEP 5: REVIEW THE LISTED DOCUMENT(S) AND CLICK ON EITHER THE DOCUMENT NUMBER FOR A “FULL DOCUMENT DISPLAY” OF INFORMATION, OR ON THE IMAGE ICON NEXT TO THE DOCUMENT NUMBER FOR A VIEW OF THE DOCUMENT ITSELF.

[SEE AN IMAGE OF EACH SCREEN, ATTACHED HERETO: APP. 1 & 2]

B. IMAGES IN TULSA COUNTY

Tulsa County has images of their real property documents in a digital image form starting in 1950 and coming to the current date. Their computerize index allows searching by grantor/grantee from 1979 to 1987, and searching by either grantor/grantee or legal description from 1987 to the present. Both grantor/grantee and tract information is being captured on a go-forward basis for use in the indices. The County is gradually adding older omitted images and earlier omitted index information, as staff time permits.

Access to these indices and images is available either in the Tulsa County Clerk's office or on-line at a remote computer location through a dial up system if the user has entered into an agreement to pay a flat monthly fee for access, with an additional charge being made if the number of times that the web site is used during a month exceeds the maximum allowance or if any images are printed.

For more information on the Tulsa County system, contact Kathy Semler in the Tulsa County Clerk's office at (918) 596-5800.

II. WHERE WE ARE GOING NEXT

A. COURT FILINGS BY ELECTRONIC MEANS

The next step in this “r/evolutionary” process is the initiation of the on-line electronic filing of real property documents (e.g., deeds, mortgages, easements, restrictions, statements of judgment, decrees, etc.).

The usual preliminary step, which occurs before a system is implemented whereby electronic images of paper documents and electronic versions of non-paper documents are filed electronically, appears to be the on-line availability of indexes/dockets and images of the documents.

The Oklahoma Supreme Court is working with numerous District /County Court Clerks to put their dockets and eventually images of all the court documents themselves on-line to be available to the general public. (see: www.oscn.net >> then select>> “COURT DOCKETS”) Access to court dockets are currently available for 12 of the 77 counties. For instance, the County Court Clerk for Oklahoma County (currently Patricia Presley), has the court dockets available on-line remotely for Oklahoma County and is in the process of placing the images on-line remotely, and currently has the probate division pleadings images available on-line remotely. All of these dockets and images are only available on a go-forward basis at this time, with the starting dates varying from county to county.

Duplicates (i.e., photocopies and telecopies) of various court documents, such as signature pages from other counsel on motions and orders, are permitted by statute to be filed in district courts and this is regularly done in Oklahoma County, under 12

O.S. §2005(E)(2)

A duplicate of any paper shall be acceptable for filing with the court and shall have the same force and effect as an original. For purposes of this section a duplicate is a copy produced on unglazed white or eggshell paper by mechanical, chemical or electronic means, or by other equivalent technique, which accurately reproduces the original. A duplicate that is acceptable for filing shall not be refused because any signatures thereon are duplicates. A carbon copy shall not be considered a duplicate for purposes of this section.

While there is statutory authority for the electronic filing of documents in the Oklahoma Supreme Court and district courts, this has not been implemented. See 20

O.S. §3004

The Supreme Court is authorized to provide for electronic filing of documents in the Supreme Court and the district courts. The Administrative Office of the Courts shall promulgate rules for the filing of documents transmitted by electronic device. Rules for electronic filing must have the approval of the Supreme Court.

And see 12 O.S. §2005(E)(3):

Papers may be filed by facsimile or other electronic transmission directly to the court or the court clerk as permitted by a rule of court. The Administrative Office of the Courts shall promulgate rules for the district court for the filing of papers transmitted by facsimile or other electronic transmission device. Rules for facsimile or other electronic transmission filing must have the approval of the Supreme Court.

On and after May , 2004, all filings with the U.S. District Court for the Western District of Oklahoma must be done electronically, in “PDF” format (i.e., portable document format). (see: www.okwd.uscourts.gov/)

B. E-FILING OF LAND DOCUMENTS IN OKLAHOMA

1. INTRODUCTION

Apparently acting in response to pressure at both the national and state levels from lenders, federal legislation mandating the acceptance of electronic real property

documents (either images of paper copies transmitted electronically or electronic images that never existed on paper) for filing in the local land records has been adopted and amended, and companion state legislation has been promulgated and amended as well.

On June 30, 2000, President Clinton signed the E-Sign Act (15 USCA § 7001 et seq). At least one commentator concluded that the adoption of this federal act was intended (1) to force each State to adopt some version of the Uniform Electronic Transaction Act [“UETA (1999)”] in order to foster uniformity among the States concerning electronic commerce, and (2) to serve as interim legislation for every State until each and every State adopts the UETA (1999). [“Electronic Signatures...E-Sign of the Times”, p.8, Julie R. Caggiano (Texas attorney), May 17-18, 2001]

In order to effectively serve as interim “State legislation”, the E-Sign Act is operative in every State except where (1) a State has adopted the UETA (1999), or (2) a State has adopted statutes that “specify alternative procedures for using electronic signatures to establish the validity of the contracts, agreements or records.” (see: Caggiano, p.14) [also see: “E-Sign Acts – Impact of New Federal and State Laws on Commercial Real Property Practice”, Donald Lampe (North Carolina attorney), February 22, 2001]

The initial Oklahoma legislation dealing with e-commerce was adopted in 1998 as the “Electronic Records and Signature Act of 1998” (15 O.S. § 960 et seq – “OKERSA”), and it arguably excluded real property documents from its coverage. 15 O.S. § 963(B) provided: *“This act shall not apply to: 3. Rules of law relating to mortgages, conveyances, surface and mineral leases, rights-of-way, and easements of real property.”*

The current Oklahoma statute dealing with e-commerce was adopted in 2000, replacing the OKERSA, and is called the “Uniform Electronic Transactions Act” (12A O.S. § 1-101 et seq – “OKUETA”). Unlike the earlier OKERSA, the OKUETA does not expressly exclude real property “Transactions” from its coverage [12A O.S. § 15-101(21)], although it does exclude any transaction covered by “a law governing the creation and execution of wills, codicils, or testamentary trusts.” [12A O.S. § 15-103(b)(1)] Also, while the newer OKUETA authorizes a state or local governmental agency or subdivision to use or to permit the use of electronic records or electronic signatures, the act does not require it. (12A O.S. § 15-118)

There has been a “discussion version” of the “Uniform Real Property Electronic Recordation Act” drafted by the National Conference of Commissioners of Uniform Laws”, which was to be discussed by the National Conference on May 2-4, 2003.

In Oklahoma, in 2003-2004, the state legislature established an “Electronic Commerce Task Force” with a Sub-Committee assigned to consider the “Electronic Filing of Land Records”. The Oklahoma County Clerk,Carolynn Caudill, was appointed as the Sub-Committee chair. The Sub-Committee met several times in 2004, and addressed two goals, including one calling for the drafting and passage of legislation to facilitate the filing of land records by electronic means. Such state legislation has passed and is effective November 1, 2004 (HB2195) (“Enabling Legislation”). A copy of the Goals, and the state Enabling Legislation as enacted, are attached hereto, along with a set of “slides” discussing “Electronic Recording”. (App. 3, 4 & 5)

The state Enabling Legislation, which became effective November 1, 2004, authorizes (but does not require) any county clerk to accept an electronic document,

The Oklahoma County Clerk intends to focus on the easier and simpler version of electronic filings, involving the transmission (i.e., by e-mail) of a scanned image of a real property paper document which exists outside the county clerk's office, and which includes the grantor's actual physical signature and the notary's actual physical signature and seal. The next and more complicated major step would be to create and to file a document that does not exist in paper form anywhere, and therefore is not in writing and does not have the traditional grantor's signature and notary's signature and seal on it. Instead, the document would exist only in electronic form on someone's computer/server with a series of unique code numbers (e.g., a grantor's and notary's name (or SSAN number) and personal identification number--PIN) "associated with it" (whatever that means) which allows for the signature and an acknowledgment to be imprinted on the document (when viewed or printed) looking just like the original signatures would appear.

Oklahoma County is moving slowly towards electronic filing of real property documents. They are expecting to have a procedures manual completed in the near future and it will be submitted to the county District Attorney or the state Attorney General's office for approval before any system is implemented. Such diligence is due to several ambiguities existing in the current OKUETA language.

3. TULSA COUNTY

Tulsa County has already started the process of accepting electronic real property documents, as of Fall 2004. The County is using a third party vendor (ACS) as the intermediary. ACS enters into agreements with document originators (e.g., title companies -- all types of documents -- and national lenders -- only mortgage releases at

this time) who transmit images and template information (for indexing the document) to ACS who in turn electronically transmits the same information to the County Clerk for filing. The County files the image of the document and then returns an image showing the recording information to ACS, who forwards the recorded document to the originator. The national lenders, who are only transmitting mortgage releases at this time, are apparently using non-paper documents (in electronic form only) with images of the lender's signature and notary signature superimposed on the document image.

At the present time, Tulsa County is receiving about 4-5 documents a day in electronic form (paper and non-paper), and are hopeful that these numbers will increase when the software used to communicate between ACS and the originators of the documents is revised to become less labor intensive (i.e., requiring less keyboard entering of template information).

Tulsa County apparently has overcome at least one of the problems still burdening Oklahoma County. The Tulsa County system can print a multi-page document without printing each screen separately, as required in the Oklahoma County system.

4. GENERAL LAWS IN EFFECT

The Oklahoma Statute of Frauds requires real property conveyancing documents to be in writing and subscribed. See 15 O.S. §136(4):

The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, by an agent of the party or by a single-party broker of the party pursuant to Sections 858-351 through 858-363 of Title 59 of the Oklahoma Statutes:

4. An agreement for the leasing for a longer period than one (1) year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent or a single-party broker of the party sought to be charged, is

invalid, unless the authority of the agent or the single-party broker be in writing, subscribed by the party sought to be charged.

(underlining added)

And see 16 O.S.§4(A):

No deed, mortgage, or conveyance of real estate or any interest in real estate, other than a lease for a period not to exceed one (1) year, shall be valid unless in writing and subscribed by the grantors. No deed, mortgage, or contract affecting the homestead exempt by law, except a lease for a period not exceeding one (1) year, shall be valid unless in writing and subscribed by both husband and wife, if both are living and not divorced, or legally separated, except as otherwise provided for by law.

(underlining added)

(Note: By the way, have you ever wondered why does this statute – 16 O.S.§4(A) -- use the word “conveyance” in the first sentence, and then uses “contract” in lieu thereof in the second sentence?)

The “long form” acknowledgment statute (16 O.S.§33) expressly provides:

An acknowledgment by individuals of any instrument affecting real estate shall be in substantially a form as provided for in the Uniform Law on Notarial Acts or in substantially the following form:

See the newer alternative “short form” acknowledgment at 49 O.S.§119 (“Uniform Law on Notarial Acts”). Some of you may recall the argument among attorneys who suggested that it was not acceptable to use the new “general” “short form” acknowledgment form instead of using the older “special” “long form” version for real property transactions. Such disagreement is the reason that the long form statute (16 O.S § 33) was amended to state: “*in substantially a form as provided for in the Uniform Law on Notarial Acts*”.

To avoid arguments about the application of “special” versus “general” legislation, it may be necessary for the supervising State agency – the Secretary of State -
- to adopt further state legislation designed to explain, or to authorize a state agency to

pass regulations to explain, what can be accepted as an appropriate representation for such signatures and acknowledgments, especially in the context of creating acceptable abstracts of title, and designing title examination procedures and Standards for reviewing such records. If the SSAN and PIN numbers are expected to be private and secret to ensure the avoidance of abuse, such as identity theft, how can the public or the title professionals confirm that the right person signed the document? The impact on title plants, abstracts of title, and title insurance, arising from the use of electronic documents will also need to be explored as well.

Specific questions that arise when the language of the current Uniform Electronic Transaction Act, which has been adopted in Oklahoma, is reviewed (12A O.S. §15-101 et seq; attached as App. 7) include (1) which non-original form of documents can the County Clerks now accept (e.g., photocopies, telecopies, and electronic forms on disk or by e-mail – Word Perfect, Microsoft Word, PDF, and/or TIF) and (2) must all such electronic forms include a “digital signature” which encodes the document before it is transmitted, and must such “digital signature” belong solely to the “signer” of the document, rather than the transmitter of the document. The definition of a “digital signature” (12A O.S. §15-102(6)) provides that it is “a type of electronic signature’ A “digital signature” is not a real signature but is a software encoding program used to encrypt the content of the document before it is sent elsewhere. The code assures the recipient that the document was from a known person. The definition of an “electronic signature” (12A O.S. §15-102(10)) requires that it belong to the person who “sign[ed] the record”, meaning the signer of the deed, mortgage, release or other transaction document. Therefore, under the Oklahoma statutes, it appears that since a “digital signature” is a

“type” of “electronic signature” and all “electronic signatures” must belong to the person who really signed the document, therefore, the person who encodes the document and sends it elsewhere (using a “digital signature”) must also always be the “signer” of the document. These two matters must be clarified.

While the tides of progress may lead to faster transactions and more convenience in avoiding traveling to distant sites to sign and record and examine real property documents, the right structure needs to be put in place to avoid both confusion in the daily implementation process, and to protect against transaction fraud and identity theft.

(C:\mydocuments\bar&papers\papers\171e-imagesOCCLA.doc)