UPDATE ON OKLAHOMA TITLE EXAMINATION STANDARDS: REVISIONS FOR 2005 (effective November 12, 2004)

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"*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)

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A. GENERAL RESPONSIBILITY

According to the Oklahoma Attorney General, only a licensed attorney can issue an "opinion on the marketability of title" regarding title to real estate. This issue arose during the process of interpreting the Oklahoma Statute requiring the examination of a duly-certified abstract of title before a title insurance policy can be issued. 36 O.S. Section 5001 (C) provides:

> *Every policy of title insurance or certificate of title 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 duly appointed as agent of a title insurance company, provided that no policy of title insurance shall be issued in the State of Oklahoma except after examination of a duly-certified abstract of title prepared by a bonded and licensed abstractor as defined herein.* (underlining added).

The Attorney General opined (1983 OK AGG 281, ¶6-7) as follows:

> *Your second question raises the issue of whether the title examination for purposes of issuing a title policy must be done by a licensed attorney. A previous opinion of the Attorney General held:*
>
> > *"All such examinations of abstract .. . shall be conducted by a licensed attorney prior to issuance of the policy of title insurance." A.G. Opin. No. 78-151 (June 6, 1978).*
>
> *This opinion was based on the assertion that a title insurance policy "expresses an opinion as to the marketability of title." A.G. Opin. No. 78-151, supra. In reality, title insurance simply insures the policyholder against defects in the title. It does not express an opinion that the title is marketable. Land Title Company of Alabama v. State ex rel. Porter, 299 So.2d 289,295 (Ala.1974). While the rationale of the previous opinion is incorrect, we adhere to the conclusion expressed in that opinion that the examination of the abstract pursuant to 36 O.S. 5001(C) (1981) must be done by a licensed attorney. We reach this conclusion because the examination required by statute would only be useful if the examiner expressed an opinion on the marketability of the title. This constitutes the practice of law by the examiner. Land Title Company of Alabama v. State ex rel . Porter, supra at 295; Kentucky State Bar Association v. First Federal Savings & Loan, 342 S.W.2d 397 (Ky.App. 1961). The theory that the corporation is actually examining the title for itself through an agent or employee and thus not engaged in the practice of law is invalid since laypersons or nonprofessionals cannot perform legal services for their employers. Kentucky State*

Bar Association v. Tussey, 476 S.W.2d 177 (Ky.App. 1972). There is no prohibition, however, against licensed staff attorneys furnishing title opinions for the company as long as these opinions are not sold or given to third parties. The Florida Bar v. McPhee, 195 So.2d 552 (Fla. 1967); Steer v. Land Title Guarantee & Trust Co., 113 N.E.2d 763 (Ohio Com.Pl. 1953). (underlining added)

The Attorney who undertakes to examine a title to real property as part of a sale or a loan transaction has a significant responsibility. As noted in Patton:

§45. Importance of Title Examination

In distinction from the abstracter's duty to search the records and to merely report the facts as he finds them, it is the province of the attorney to examine these facts either from the abstract or, using it as a guide, from the records themselves, and to formulate a legal opinion thereon. He is therefore commonly called a title examiner (in distinction from a searcher or abstracter of the records, though, if he is a lawyer admitted to practice in the state, he may be both abstracter and examiner). …

§52. Responsibility of Examining Attorney

Though an attorney must be held to have undertaken to use a reasonable degree of care or skill, and to possess to a reasonable extent the knowledge requisite to a proper performance of his duties, and will be held liable to his client for injury resulting as a proximate consequent from the want of such knowledge and skill, or from a failure to exercise such care, he is not a guarantor of the titles which he approves and is only liable for negligence or misconduct in their examination. He cannot be held for damages resulting from an opinion rendered in good faith which proves to be erroneous either as to the law or as to its application to the particular facts involved. He is of course liable for injury arising from his negligence, such as omitting in his report to a purchaser liens shown in the abstract, or in certifying in his report to others as to the subsistence of a lien which has ceased to exist or which never attached. But, unless there are circumstances to take the case out of the general rule, his liability, like that of an abstracter, extends only to those by whom he has been employed.

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In addition to studying the matters contained infra relating to title in his own state and supra in relation to methods of examination, each reader is urged to supplement his familiarity with this text by reading any local work which may have been prepared for his state and any list of standards which have been adopted by the lawyers of his state or district. He should procure an index of the curative and limitation acts applicable to titles in his state, either a published list where that is possible, or one prepared and kept up by himself. (underlining added)
(Rufford G. Patton and Carroll G. Patton, Patton on Titles, 2nd Edition (herein "Patton"))

B. LIABILITY OF TITLE EXAMINERS TO NON-CLIENTS

While there is no foolproof way to avoid liability to non-clients (notwithstanding Patton's assertion that: "*But, unless there are circumstances to take the case out of the general rule, his liability, like that of an abstracter, extends only to those by whom he has been employed*."), it is usually a good practice to have both the inside address of the title opinion (i.e., the addressee) and the limiting language, elsewhere in the opinion, expressly designate the sole person(s) allowed to rely on the opinion.

However, even where the opinion is addressed to a specific person or entity, it is possible that due to the particular circumstances surrounding the transaction, the attorney who is representing one party, such as the lender -- and rendering an opinion directed solely to that lender -- might be held to be liable to the opposing party, such as the borrower, as well.

As noted in an Oklahoma case considered by the 10th Circuit U.S. Court of Appeals, Vanguard Production, Inc. v. Martin, 894 F.2d 375 (10th Cir. 1990):

> *The Oklahoma Supreme Court replied that the pledgee's complaints stated a cause of action under Oklahoma law. Privity of contract does not apply to tort actions under Oklahoma law. See Keel v. Titan Constr. Corp., 639 P.2d 1228, 1232 (Okla. 1981). The Bradford court stated that to determine an attorney's negligence the jury must determine whether the attorney's conduct was "the conduct of an ordinarily prudent man based upon the dangers he should reasonably foresee TO THE PLAINTIFF OR ONE IN HIS POSITION in view of all the circumstances of the case such as to bring the plaintiff within the orbit of defendant's liability." Id. at 191 (emphasis in original).*
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> ***
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> *In our view a contract for legal services is a contract for services giving rise to the duty of workmanlike performance. The record in this case reveals extensive communications between the attorneys [for the lender], Martin and Morgan, and the purchaser, Vanguard [the borrower], concerning the [lender's] title opinion. The record also shows that all parties, including Martin, Morgan, [the borrower] Vanguard, and [the lender] Glenfed, were concerned about the Texas Rose Petroleum suit. Thus, we find that an ordinarily prudent attorney in the position of the defendants would reasonably have apprehended that[the borrower] Vanguard was among the class of nonclients which, as a natural and probable consequence of the attorneys' actions in preparing the title opinion for Glenfed, could be injured. Thus, we hold that the defendants owed a duty of ordinary care, Bradford, 653 P.2d at 190, and workmanlike performance, Keel, 639 P.2d at*

1231, to Vanguard in the performance of their contract for legal services with Glenfed. We stress that our holding only addresses the question of the duty of the defendants owed to Vanguard and not the question of whether Martin's, Morgan's and Ames, Ashabranner's acts were the proximate cause of Vanguard's injuries. See Bradford, 653 P.2d at 190-91; Keel, 639 P.2d at 1232. (underlining added)

An interesting Oklahoma Court of Appeals case was decided in 1991, American Title Ins. v. M-H Enterprises, 815 P.2d 1219 (Okl. App. 1991). Therein it was held that a buyer of real property can sue (i.e., via counter claim) the title insurer for negligence in the preparation of a title policy, even if the title insurance policy was issued only in favor of the buyer's lender. This rule was applied where: (1) no abstract was prepared, (2) an attorney's title examination was not undertaken, and (3) the insurer/abstractor missed a recorded first mortgage. The facts of the case showed that, after the buyer/borrower lost the house through a foreclosure of the missed first mortgage, the insurer paid the insured second mortgage holder to settle under the terms of the title insurance policy and had such lender assign the worthless second note and mortgage to the insurer. The insurer then sued the buyer/borrower under the warranty of title in the second mortgage. The appellate court held that while the buyer/borrower was not a named insured, the insurer's own negligence (i.e., no abstract and no examination) caused the loss, and that the insurer did not buy the note and mortgage as a holder in due course, because (1) no value was paid for the acquisition of the note and mortgage (i.e., the payment was to settle its obligations under the policy) and (2) the note and mortgage were already in default when the insurer took an assignment of them.

The message in these two cases appears to be that a party that conducts either the examination or insures the title, can be held liable for an error in such effort to a third party. This is true even where the title examiner and title insurer had not expressly entered into any contractual relationship with such third party. Based upon these two cases, it appears that this

liability might arise even where the attorney or insurer specifically directed his opinion or policy to only one of the multiple participants in the transaction.

C. STATUTE OF LIMITATIONS ON TITLE OPINIONS

In terms of the nature of (i.e., tort vs. contract), and the statute of limitations on, attorneys' errors in examination of title, it should be noted that in 1985 the Oklahoma Supreme Court held:

> *In Oklahoma, an action for malpractice, whether medical or legal, though based on a contract of employment, is an action in tort and is governed by the two-year statute of limitations at 12 O.S.A. 1981, § 95 Third. (Seanor v. Browne, 154 Okl. 222, 7 P.2d 627 (1932)). This limitation period begins to run from the date the negligent act occurred or from the date the plaintiff should have known of the act complained of. (McCarroll v. Doctors General Hospital, 664 P.2d 382 (Okl. 1983)). The period may be tolled, however, by concealment by the attorney of the negligent acts which injured the client. This Court has previously held, in Kansas City Life Insurance Co. v. Nipper, 174 Okl. 634, 51 P.2d 741 (1935) that:*
>
> > *One relying on fraudulent concealment to toll the statute of limitation must not only show that he did not know facts constituting a cause of action, but that he exercised reasonable diligence to ascertain such facts.*

(underlining added)

(Funnell v. Jones, 737 P.2d 105 (Okla. 1985))

However, in 1993 the Oklahoma Supreme Court "clarified" their holding in Funnell by declaring:

> *Appellees argue the instant case should be controlled by Funnell v. Jones, 737 P.2d 105 (Okla. 1985), cert. denied, 484 U.S. 853, 108 S.Ct. 158, 98 L.Ed.2d 113 (1987), a case where we applied the two year tort limitation period to a legal malpractice case. Appellees' reliance on Funnell is misplaced. The opinion in Funnell gives no indication a separate contract theory was alleged there or that the plaintiffs there attempted to rely on the three year limitation period for oral contracts. Thus, our statement in Funnell to the effect an action for malpractice, whether legal or medical, though based on a contract of employment, is an action in tort, must be taken in the context it was made, to wit: determining whether the two year limitation for torts was tolled based on allegations of fraudulent concealment on the part of defendant attorneys and that no acts alleged against defendants occurred within the two years immediately preceding filing of the*

lawsuit. Id. at 107-108. We did not decide in Funnell a proceeding against a lawyer or law firm is limited only to a proceeding based in tort no matter what the allegations of a petition brought against the lawyer or law firm. We have never so held and, in fact, to so rule would be tantamount to treating lawyers differently than we have treated other professions, something we refuse to do.

We have held a party may bring a claim based in both tort and contract against a professional and that such action may arise from the same set of facts. Flint Ridge Development Company, Inc. v. Benham-Blair and Affiliates, Inc., 775 P.2d 797, 799-801 (Okla. 1989) (architectural, engineering and construction supervision services). In essence, the holding of Flint Ridge is if the alleged contract of employment merely incorporates by reference or by implication a general standard of skill or care which a defendant would be bound independent of the contract a tort case is presented governed by the tort limitation period. Id. at 799-801. However, where the parties have spelled out the performance promised by defendant and defendant commits to the performance without reference to and irrespective of any general standard, a contract theory would be viable, regardless of any negligence on the part of a professional defendant. Id. As pertinent here, the specific promise alleged or reasonably inferred from the petition and documents attached thereto was to search the records of the County Clerk for an approximate nine (9) year period and report those records on file affecting the title for loan purposes. Simply, if this was the promised obligation a contractual theory of liability is appropriate which is governed by the three year limitation period applicable to oral contracts. (underlining added)

(Great Plains Federal Savings & Loan v. Dabney, 846 P.2d 1088, 1092 (Okla. 1993))

II. NEED FOR STANDARDS

A. BACKGROUND AND AUTHORITY OF STANDARDS

The first set of Statewide Standards was adopted in 1938 by the Connecticut Bar Association. On November 16, 1946 the General Assembly and House of Delegates of the Oklahoma Bar Association ("OBA") approved 21 Title Examination Standards ("Standards") for the first time in state history. 17 O.B.J. 1751. Of these 21, there were 10 without any specific citation of authority expressly listed. There are currently over 100 Standards in Oklahoma, and about 13 of these have no specific citation of authority (i.e., no citation of supporting Oklahoma statutes or case law).

In Oklahoma, new and revised Standards are developed and considered each year at 9 monthly Title Examination Standards Committee ("Standards Committee") meetings held from January to September. These proposals are then presented annually by the Standards Committee to the OBA Real Property Law Section ("Section") at the Section's annual meeting, usually held in November of each year. Immediately thereafter, the Section forwards to the OBA House of Delegates ("House"), for the House's consideration and approval, on the day following the Section meeting, any new or revised Standards which were approved at the Section's meeting.

All Oklahoma Supreme Court opinions are binding and must be followed by all trial court judges, meaning that such decisions are “precidential”. However, an opinion of one of the multiple intermediate 3-judge panels of Courts of Civil Appeals is only “persuasive” on future trial judge’s decisions, and not binding.

Oklahoma’s set of Standards have received acceptance from the Oklahoma Supreme Court which has held:

> *While [the Oklahoma] Title Examination Standards are not binding upon this Court, by reason of the research and careful study prior to their adoption and by*

reason of their general acceptance among members of the bar of this state since their adoption, we deem such Title Examination Standards and the annotations cited in support thereof to be persuasive. (underlining added)

Knowles v. Freeman, 649 P.2d 532, 535 (Okla. 1982).

The Standards become binding between the parties:

(1) IF the parties' contract incorporates the Standards as the measure of the required quality of title, for example:

(a) Standard 2.2 REFERENCE TO TITLE STANDARDS provides: *"It is often practicable and highly desirable that, in substance, the following language be included in contracts for a sale of real estate: 'It is mutually understood and agreed that no matter shall be construed as an encumbrance or defect in title so long as the same is not so construed under the real estate title examination standards of the Oklahoma Bar Association where applicable;'"* (emphasis added) and

(b) the Oklahoma City Metropolitan Board of Realtors standard contract provides*: "7. TITLE EVIDENCE: Seller shall furnish Buyer title evidence covering the Property, which shows marketable title vested in Seller according to the title standards adopted by the Oklahoma Bar Association. . .",* (emphasis added) or

(2) IF proceeds from the sale of oil or gas production are being held up due to an allegedly unmarketable title [52 O.S. 570.10.D.2a; also see: Hull, et al. v. Sun Refining, 789 P.2d 1272 (Okla. 1990) ("Marketable title is determined under §540 [now §570.10] pursuant to the Oklahoma Bar Association's title examination standards.")].

In these above instances, the parties might be subject to suits to specifically enforce or to rescind their contracts, to seek damages, or to pay increased interest on the withheld proceeds (i.e., 6% vs. 12%), with the Court's decision being based on the "marketability" of title as measured, where applicable, by the Standards.

However, it should be noted that *"It is, therefore, the opinion of the Attorney General that where there is a conflict between a title examination standard promulgated by the Oklahoma Bar Association and the Oklahoma Statutes, the statutory provisions set out by the Legislature shall prevail."* Okl. A.G. Opin. No. 79-230.

B. IMPETUS FOR STANDARDS: PROBLEMS WITH SEEKING PERFECT TITLE

The title examiner is required, as the first step in the examination process, to determine what quality of title is being required by his client/buyer or client/lender before undertaking the examination.

According to Am Jur 2d:

> *An agreement to sell and convey land is in legal effect an agreement to sell a title to the land, and in the absence of any provision in the contract indicating the character of the title provided for, the law implies an undertaking of the part of the vendor to make and convey a good or marketable title to the purchaser. A contract to sell and convey real estate ordinarily requires a conveyance of the fee simple free and clear of all liens and encumbrances. There is authority that the right to the vendee under an executory contract to a good title is a right given by law rather than one growing out of the agreement of the parties, and that he may insist on having a good title, not because it is stipulated for by the agreement, but on his general right to require it. In this respect, the terms "good title," "marketable title," and "perfect title" are regarded as synonymous and indicative of the same character of title. To constitute such a title, its validity must be clear. There can be no reasonable doubt as to any fact or point of law upon which its validity depends. As is sometimes said, a marketable title must be one which can be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence.* (underlining added)
> (77 Am Jur 2d §115 Title of Vendor: Generally; Obligation to furnish good or marketable title)

While, in the absence of any provisions in a contract for the sale of land indicating the character of the title to be conveyed, the law implies an obligation or undertaking on the part of the vendor to convey or tender a good and marketable title, if the contract expressly stipulates as to the character of the title to be furnished by the vendor, the courts give effect thereto and require that the title offered conform to that stipulation, it is immaterial that it may in fact be a good or marketable title. A contract to convey a specific title is not fulfilled by conveying another and different title. On the other hand, when the title which the vendor offers or tenders conforms to the character of title stipulated in the contract of sale, the vendee is bound to accept it although the title may not be good or marketable within the meaning of the obligation or undertaking to furnish such a title which the law would have implied in the absence of any stipulation. Refusal to accept title tendered in accordance with the terms of sale constitutes a breach by the purchaser of land of his contract to purchase. If a contract for the purchase of real estate calls for nothing more than marketable title, the courts cannot substitute a different contract therefor. (underlining added)
(77 Am Jur 2d §123 Special Provisions as to character of title: Generally.)

The terminology which is used to define the quality of title to real property has apparently changed over time. Patton notes:

In the early law courts, titles as between vendor and purchaser were either good or bad; there was no middle ground. No matter how subject to doubt a purchaser might prove the title to be, he was under obligation to take it, unless he could prove that it was absolutely bad. But the courts of equity coined the expression "marketable title," to designate a title not necessarily perfect, or even good, in the law sense, but so free from all fair and reasonable doubts that they would compel a purchaser to accept it in a suit for specific performance. Conversely, an unmarketable title might be either one that was bad, or one with such a material defect as would cause a reasonable doubt in the mind of a reasonable, prudent, and intelligent person, and cause him to refuse to take the property at its full or fair value. Therefore the term "unmarketable title" includes both "bad titles" and "doubtful titles." Though originally there might have been a difference between a "good title" and a "marketable title," now the terms are used interchangeably. Other equivalent terms appear in the notes. A perfect record title may not be marketable, because of apparent defects, which cause reasonable doubts concerning its validity, and a good or marketable title may be far from perfect, because of hidden defects. In fact, under either the English system of unrecorded conveyances, or under the system afforded by our recording acts, "it is impossible in the nature of things that there should be a mathematical certainty of a good title." While examiners should be cautious in advising clients as to the acceptance of a title, neither should they frighten them by advertising these relatively infrequent dangers; and they must remember that a purchaser cannot legally demand a title which is absolutely free from all suspicion or possible defect. He may require only such a title as prudent men, well advised as to the

facts and their legal bearings, would be willing to accept. Many courts further hold that a doubt sufficient to impair the character of marketableness must be such as will affect the selling value of the property or interfere with the making of a sale.

If unmarketable, the doubt which makes it so may be based upon an uncertainty either as to a fact or as to the law. If objection is made because of doubt upon a question of law, this does not make the title unmarketable unless the question is fairly debatable -- one upon which the judicial mind would hesitate before deciding it. Likewise as to a question of fact, there must be a real uncertainty or a difficulty of ascertainment if the matter is to affect marketability. A fact which is readily ascertainable and which may be readily and easily shown at any time does not make title unmarketable. For instance, where a railway company reserved a right of way for its road as ***now*** *located and constructed or hereafter to be constructed, the easement depended on the fact of the* ***then*** *location of the line; and as the evidence showed that no line had then been located, and as the matter could be easily and readily proved at any time, the clause did not make plaintiff's title unmarketable. But where there are known facts which cast doubt upon a title so that the person holding it may be exposed to good-faith litigation, it is not marketable.*

Recorded muniments form so generally the proofs of title in this country, that the courts of several jurisdictions hold not only that a good or marketable title must have the attributes of that term as used by the equity courts, but also that it must be fairly deducible of record. This phase of the matter will be considered further in the ensuing section.

Determination of questions as to the marketability of titles is peculiarly within the province of counsel for buyer or mortgagee. Counsel for the owner will not only endeavor to remedy the condition of the title as to any requirements which he concedes to be proper, but usually finds it easier to do so than to contest the matter, even as to matters not so conceded. In the main it is only when compliance is impossible or when time for compliance is lacking or has passed that the question reaches the courts. Even then a decision is not always possible. This is because courts usually will not undertake to determine doubtful questions involving the rights of others who are not parties to the action. (underlining) (§46. Classification of Vendor Titles)

Title insurance, like most types of insurance, insures against loss due to certain conditions. One of these conditions which triggers liability is “unmarketability of title”. Such term is defined in such policy as: “an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which could entitle a purchaser of the estate or interest

described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title." (ALTA Owner's Policy (10-21-87)) Such definition is sufficiently circular to require the interpretation of the applicable State's law in each instance to determine whether specific performance would be enforced in such jurisdiction.

In summary, it appears that "marketable title" means (1) the public record affirmatively shows a solid chain of title (i.e., continuous and uninterrupted) and (2) the public record does not show any claims in the form of outstanding unreleased liens or encumbrances. This "good record title" can be conveyed and backed up by the delivery of a deed to the vendee containing sufficient warranties to ensure that the vendor must make the title "good in fact", if non-record defects or non-record liens and encumbrances surface later.

However, to the extent that a contract provision -- providing that the vendor must convey "marketable title" -- is interpreted to require title to be free from "all reasonable doubt", it opens the door to differences of opinion between persons of "reasonable prudence". As noted in Bayse:

> *Time cures certain errors in conveyancing by means of statutes of limitations. The healing effect of curative legislation removes other defects of conveyancing. But operation of these kinds of legislation neither defines nor declares what constitutes a marketable title. The usual definition of a marketable title is one which is free from all reasonable doubt. This negative approach is not now satisfactory, for it is a rare title concerning which an examiner cannot entertain some doubt with respect to some transaction in its history.* (underlining added) (Paul E. Bayse, Clearing Land Titles (herein "Bayse"): §8. Legislation)

It is this focus on looking for a defect -- any defect -- whether substantive or merely a technical one, that can cause the system to bog down. If there is more than a single title examiner within a community, there is also the possibility of there being a wide range of examination attitudes resulting in differing conclusions as to the adequacy of the title.

In "Increasing Land Marketability Through Uniform Title Standards", 39 Va.L.Rev. 1

(1953), John C. Payne, (herein "Increasing Marketability") the problems caused by each examiner exercising unbridled discretion are noted:

> *When the examiner, upon the basis of these decisions, has found that the present vendor can convey a title which is good in fact, he must then ask whether the title has the additional characteristic of marketability. What constitutes a marketable title? Here again legal definitions are subordinate to functional meaning. What the purchaser of land wants is a title which not only can be defended but which can be presented to another examiner with the certainty that it will be unobjectionable. It is small comfort to the owner that he has not been disseized if he is unable to sell or mortgage. If one and the same examiner passed all titles in a given locality, the title which the examiner considered good as a practical matter would, of course, also be merchantable. But such is not the case, and the present examiner must anticipate that his client will in the future attempt to either sell or mortgage and that the same title will come under the scrutiny of some other examiner. In each of the decisions which an examiner has made in determining the validity of a title he has had to exercise sound legal and practical judgment. Will a second examiner, vested with the same wide discretion, reach the same conclusion? If his conclusion is different and he rejects the title, the professional reputation of the first examiner will be impaired and his client may suffer substantial financial loss. Faced with this uncertainty, many examiners have adopted a solution which emphasizes individual security rather than the general facility of land transfers. This is the practice known as "construing against title," or more picturesquely, as "flyspecking." These terms indicate that the examiner indulges in a minimum of presumptions of law and fact, demands full search of title in every instance, and places no reliance upon the statute of limitations. As a consequence he considers all errors of record as substantial. The result of even a* ***single examiner*** *in a community adopting this practice is to set up titles which are practically good in fact. Examiner* ***A*** *rejects a title on technical grounds. Thereafter, Examiner* ***B****, to whom the same problem is presented, feels compelled to reject any title presented to him which exhibits a similar defect. Examiner* ***A*** *is thereupon confirmed in the wisdom of his initial decision, and resolves to be even more strict in the future. It is sometimes said that the practice of construing against title reduces an entire bar to the standards of its most timorous member. This is an understatement, for the net effect is an extremity obtained only by mutual goading.*
>
> *The consequences of construing against title are iniquitous, and the practice itself is ridiculous in that it is predicated upon a theoretical perfection unobtainable under our present system of record land titles. Many titles which are practically unassailable become unmarketable or the owners are put to expense and delay in rectifying formal defects. Examiners are subjected to much extra labor without commensurate compensation, and the transfer of land is retarded. As long as we tolerate periodic re-examination of the same series of non-conclusive records by different examiners, each vested with very wide discretion, there is no remedy for*

these difficulties. However, some of the most oppressive results may be avoided by the simple device of agreements made by examiners in advance as to the general standards which they will apply to all titles which they examine. Such agreements may extend to: (1) the duration of search; (2) the effect of lapse of time upon defects of record; (3) the presumptions of fact which will ordinarily be indulged in by the examiner; (4) the law applicable to particular situations; and (5) relations between examiners and between examiners and the public. Where agreements are made by title examiners within a particular local area having a single set of land records, such agreements may extend even further and may embrace the total effect of particular specific records. For example, it may be agreed that certain base titles are good and will not thereafter be examined or that specific legal proceedings, normally notorious foreclosures and receivership actions, will be conclusively deemed effective. Although such agreements may not be legally binding upon the courts, they may go far toward dispelling the fear that if one examiner waives an apparent defect of title it may be deemed a cloud upon the title by a subsequent examiner. The result is an increase in the marketability of land and a reduction of the labor imposed upon the proponent of the title. The obvious utility of such an arrangement has led to the adoption of uniform standards for the examination of titles by an increasing number of bar associations. (underlying added)

The problems resulting from this quest for perfect title can impact the examiner and his clients in several ways:

1. The legal fees charged to the public are higher because each examination for a parcel must always go back all the way to sovereignty (or, in some states, back to the root of title);
2. The costs to cure minor defects are often relatively large compared to the risk being extinguished;
3. The unexpected costs to remedy problems already existing when the vendor came into title, which were waived by the vendor's attorney, are certainly not welcomed by the public; and
4. The prior examiner looks inept and/or the subsequent examiner looks unreasonable, when a preexisting defect is waived by one attorney and "caught" by the next.

(John C. Payne, "The Why, What and How of Uniform Title Standards", 7 Ala.L.Rev. 25 (1954) (herein "The Why of Standards")).

In addition, friction and lowering of professional cooperation increase between the title examining members of the bar as they take shots at each other's work. This process of adopting an increasingly conservative and cautious approach to examination of titles creates a downward

spiral. As noted in Bayse:

> *Examiners themselves are human and will react in different ways to the same factual situation. Some are more conservative than others. Even though one examiner feels that a given irregularity will not affect the marketability of a title as a practical matter, he is hesitant to express his opinion of marketability when he knows that another examiner in the same community may have occasion to pass upon the title at a later time and would undoubtedly be more conservative and hold it to be unmarketable. Under these circumstances he is inclined to be more conservative himself and declare the title to be unmarketable. People do not like to be required to incur expense and effort to correct defects which do not in a practical sense jeopardize a title when they have already been advised that their title is marketable. The public becomes impatient with a system that permits such conservative attitudes.*
>
> *If the same examiner passed judgment upon all title transactions, this situation would remain dormant. Unfortunately such is not the case. Or if all examiners would hold the same opinion as to specific irregularities in titles, this complication would not arise. But this also is not the case. The result in many communities has been greatly depressive, sometimes tragic.* (underlining added) (Bayse: §7. Real Estate Standards)

The State of Oklahoma used to have one of the most strict standards for "marketable title" which was caused by the interpretation of the language of several early Oklahoma Supreme Court cases. The current title standard in Oklahoma has been changed, as of November 10, 1995, to be less strict. It now provides:

> ***1.1 MARKETABLE TITLE DEFINED***
>
> *"A marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record."*

In response to this obvious need to avoid procedures that alienated the public and caused distance to grow between examiners, a movement began and mushroomed in a couple of decades throughout the country to adopt uniform title examination standards. Such standards were adopted first in local communities by the practicing bar and then on a statewide basis. Although there is some competition among local bars for the place of honor, it appears that the local bar of

Livingston County, Illinois adopted a set of 14 standards on April 7, 1923. Thereafter, in 1933 or 1934, the Gage County Nebraska Bar Association formulated 32 title standards. The Connecticut Bar, in 1938, became the first state to have statewide standards by adopting a set of 50. ("Increasing Marketability")

Over the years, since 1938, a total of 31 States have adopted statewide sets of Standards. Of these, there are currently 19 States which have sets of Standards which have been updated in the last 5 years (i.e., since 1998). In the last several years, 4 States have adopted their first sets of Standards including: Vermont (1995), Arkansas (1995), Texas (1997) and Louisiana (2001). See the attached National Title Examination Standards Resource Center Report, and see my web site at www.eppersonlaw.com.

III. NEWEST CHANGES TO TITLE STANDARDS FOR 2005 (NOV. 12, 2004)

The revised Standards and new Standards, discussed below, are considered and approved by the Standards Committee during the January-September period. The proposed changes and additions are then published in the Oklahoma Bar Journal in October, and are then considered and approved by the Section at its annual meeting in November. They are thereafter considered and approved by the OBA House of Delegates in November. These changes and additions became effective immediately upon adoption by the House of Delegates. A notice of the House's approval of the proposed new and revised Standards is thereafter published in the Oklahoma Bar Journal. It is expected that the new "TES Handbook", containing the updated versions of these Standards, will be printed and mailed to all Section members by sometime in January.

The following sections display and discuss the Proposals which are submitted to and approved by the Section and the House of Delegates. The text for the discussion is taken from the Annual Report published in the Oklahoma Bar Journal in October. This text was prepared by the General Counsel for the OBA Real Property Law Section, Joyce Palomar, a full-time professor of law at the University of Oklahoma, with the assistance of Jack Wimbish, a Committee member from Tulsa. Note that a “legislative” format is used below. Additions are underlined, and deletions are shown by ~~strikeout~~.

A brief explanatory note precedes each Proposed Standard, indicating the nature and reason for the change proposed.

2004 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2005, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 12, 2004. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Oklahoma City on Thursday, November 11, 2004.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 12, 2004. Proposals adopted by the House of Delegates become effective immediately.

An explanatory note precedes each proposed Title Standard, indicating the nature and reason for the change proposed.

Proposal 1.

The Committee recommends amending Title Standard 3.1 to more clearly organize the Standard and to make clear the circumstances under which the affidavit provided for in 16 O.S. § 76 can be used.

3.1 INSTRUMENTS BY STRANGERS

A. An instrument or abstract thereof seen by a title examiner in the course of examination of title, which is executed by any person or other legal entity who, at the time of such execution, did not own some interest in the property as shown by the record, or owned a lesser interest than the instrument purports to convey, charges the examiner and his or her client with knowledge of any interest which such person or entity in fact had which a reasonable inquiry would reveal.

If a reasonable inquiry does not reveal that such person or entity did in fact have some interest in the subject property or as great an interest as such person or entity conveyed, or if it appears from the context of the situation that the person or entity did not in fact have some such interest, then the examiner may waive objection to the defect caused by the said instrument, if the instrument is not such an instrument as is or could become a root of title under the Marketable Record Title Act.

Authority: Tenneco Oil Co. v. Humble Oil & Refining Co., 449 P.2d 264 (Okla. 1969); See Pearson v. Mullins, 369 P.2d 825-829 (Okla. 1962); 25 O.S. § 13.

Comment: Since the decision in *Tenneco, supra*, the standard as it existed prior to *Tenneco* permitting examiners to ignore stray instruments, even with its caveat, and the standard as it was amended in 1976 (see Standard 3.1, 1988 Title Examination Standards Handbook) are not supported by the law and therefore ought not to be continued. While it is true that many stray instruments are the result of a scrivener's error in drafting the description, it is also true that an instrument may appear to be stray because the grantor failed to record the instrument which carried title to said grantor. When the situation is of this latter kind, the case comes under the facts and decision in *Tenneco, supra*. For this reason the examiner who knows of a stray instrument must make such inquiry that will assure the examiner that the grantor in the stray instrument did not have some interest in the property even though it be not of record.

A stray instrument or abstract thereof which is or could be a root of title under the Marketable Record Title Act, 16 O.S. §§ 71-80 may not be disregarded by the examiner, but must be regarded as creating, or potentially creating, a root of title under the Marketable Record Title Act. ~~provided that certain instruments cannot create a root of title as provided by 16 O.S. § 76, as amended effective November 1, 1995.~~

Authority: Mobbs v. City of Lehigh, 655 P.2d 547 (Okla. 1982); 16 O.S. §§ 71-80.

Comment: See Comment, Standard 30.7 and Comment 4, Standard 30.9; see also 60 O.S. § 515.1, relating to condominium unit instruments involving over conveyances.

B. Pursuant to 16 O.S. § 76, an instrument which is executed by a person or entity, or a decree of distribution entered in the estate of a decedent, who or which does not otherwise appear in the chain of title to the property, cannot be the basis of a root of title under the Marketable Record Title Act, and therefore the examiner may waive any defect caused by such instrument, if: (1) there is apparent from the record an otherwise valid, uninterrupted chain of title traceable to an instrument which is a root of title as defined by the Marketable Record Title Act and (2) a current record owner of the property executes and records an affidavit alleging the current owner or owners are in possession of the property and that the parties claiming under the instrument in question own no interest in the property.

Authority: 16 O.S. §76.

Caveat: 16 O.S. § 76 does not directly address the situation where an otherwise "stray" instrument, as defined under the statute has been of record for more than thirty (30) years and is, at the time, the apparent root of title. However, because of the requirement of Section 76(b)(1), that there must be an "otherwise" valid chain traceable to an instrument "which is a root of title as defined by Sections 71 through 80" of Title 16, it would appear that the mere recording of an affidavit after the stray instrument had already ripened into a root of title would not be sufficient to revoke the status of such stray instrument as a root of title. However, the issue is not directly addressed by the Statute, nor by an reported decision.

Proposal 2.

The Committee recommends that Title Standard 23.1 be amended to add Paragraphs D & E to define duration of judgment liens in light of the Supreme Court's holding in U.S. Mortgage v. Laubach, 2003 OK 67. and to clarify how these liens are released.

23.1 JUDGMENT LIENS

D. Duration of a Judgment Lien.

The lien of a judgment, pursuant to 12 O.S. § 706, runs from the date the judgment lien is created until the judgment lien is extinguished by the failure to extend the lien of the judgment pursuant to 12 O.S. § 759.

U.S. Mortgage v. Laubach, 2003 OK 67, 73 P.3d 887

E. Release of Judgment Lien

A release of a judgment lien, pursuant to 12 O.S. § 706, must be filed in the office of the county clerk in the county in which the lien is to be released, unless the judgment lien was extinguished as set out in Paragraph D above.

12 O.S. § 706(E)

Note: For judgment liens created pursuant to the Federal Debt Collection Procedures Act, see Section B above.

Note: See Title Examination Standards 34.1 and 34.2 regarding the effect of bankruptcy on judgment liens.

Proposal 3.

The Committee recommends the addition of a second comment to Standard 24.8 to reflect the 2001 amendment of 46 O.S. § 301.B.

24.8 UNENFORCEABLE MORTGAGES AND MARKETABLE TITLE.

No mortgage, contract for deed or deed of trust barred under the provisions of 46 O.S. § 301 shall constitute a defect in determining marketable record title.

Authority: 46 O.S. § 301

Caveat: The examiner should be aware that the above Standard may not apply to mortgages, which are part of a nationwide federal program, in which the United States Government, or one of its agencies is the mortgagee. See United States v. Ward, 985 F.2d 500 (10th Cir. 1993)

Comment: As a result of the repeal of 12A O.S.§ 3-122, paragraph B. of this Standard was repealed in 1995. It provided that, for a debt payable on demand, the date of the last maturing obligation for the purposes of 46 O.S. § 301 was the date of execution of the mortgage.

Comment: 46 O.S. § 301.B states that if enough information is provided on the face of the mortgage, contract for deed or deed of trust to calculate the final due date of the last maturing obligation of the instrument, even if the final due date is not specifically stated, the lien is unenforceable after the expiration of seven (7) years from the date of the last maturing obligation.

APPENDICES

1. SCHEDULE OF TES COMMITTEE MEETINGS FOR THE CURRENT YEAR
2. LATEST TITLE EXAMINATION STANDARDS COMMITTEE MEETING AGENDA
3. LIST OF ARTICLES AVAILABLE ON-LINE, BY KRAETTLI Q. EPPERSON
4. NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER REPORT
5. OKLAHOMA T.E.S. COMMITTEE MEMBERS (FOR PRIOR YEAR)

APPENDIX 1
SCHEDULE OF T.E.S. COMMITTEE MEETINGS

OBA REAL PROPERTY LAW SECTION
TITLE EXAMINATION STANDARDS COMMITTEE

2005 TES Committee Meeting Schedule

January 15, 2005 - Tulsa

February 19, 2005 - Stroud

March 19, 2005 - OKC

April 16, 2005 - Stroud

May 21, 2005 - Tulsa

June 18, 2005 - Stroud

July 16, 2005 - OKC

August 20, 2005 - Stroud

September 17, 2005 - Tulsa

APPENDIX 2
LATEST T.E.S. COMMITTEE AGENDA

2005 AGENDA

(As Of January 4, 2005)

TITLE EXAMINATION STANDARDS COMMITTEE
of the
Real Property Law Section of the O.B.A.

Sub-Comm.	Std.	Status	Description

==========PENDING==========

_____*JAN 15/TULSA*_____

Wimbish	NEW	Jan Report	JOINDER OF O.T.C. WITHOUT DATE OF DEATH OF NAMED PERSON *68 O.S. 801 makes OTC an indispensable party, but allows OTC to opt out if name, date and place of death of the deceased is unknown. OTC is currently succeeding in Motions to Dismiss in such circumstances leaving the OTC estate tax lien as a possible unextinguished lien on the title, after a foreclosure or quiet title action. Is this a title examination issue? What about joining the IRS, if you are joining the OTC?*

McEachin Astle Haslam	NEW	Jan Report	MERS *The situation has arisen where titles have been turned down where the mortgage was held by "MERS as the nominee for XYZ" but the foreclosure was conducted for or the release was signed by XYZ, rather than by MERS.*

McEachin	23.1 et seq	Jan Report	JUDGMENT LIENS *Does the enactment in Fall 2002 of 12 O.S.§426 (Statement Under Penalty of Perjury) mean that such unsworn statement would meet the substantial compliance test of 12 O.S.§706 if it is used on a Statement of Judgment in lieu of a Jurat? Does the Standard need to have a note added saying such "unsworn statement" is acceptable to create a lien? The DHS child support division would like to use such "unsworn statement" to speed up the filing of hundreds of such arrearage judgements. (suggested by Gary Clark)* [McEachin will

			send letter to legislative authors re: original intent and re: possible request to Attorney General to answer such questions]

(Epperson) Struckle Orlowski Hardwick	NEW	Feb Report	UNIFORM TRUST ACT *For the fifth (?) year in a row, this Act has been submitted as a Bar-supported bill, and the Real Property Law Section has killed it each year. It is coming up again this year.*

(Epperson) Struckle	NEW	Feb Report	BANKRUPTCY *When can the debtor sell an unencumbered homestead? (e.g., Several sets of statutes and the related Planning Commissions were left out of this Standard.*

(Epperson) Struckle	New	Feb. Report	DUE PROCESS *Booth v. McKnight, 2003 OK 49, raises questions about due process in a probate context.* [Jack Wimbish will write an Article for OBJ]

(Epperson)	NEW	Jan Report	JUDGMENTS/DECREES & CONSTRUCTIVE NOTICE *If a judgment or decree – affecting title to real property -- is required to be placed in the county clerk's land records in order to constitute constructive notice, but has not been filed there, does the inclusion of such document in an abstract give to the examiner and the client actual notice of the same liens and ownership changes? And as of what date?*

Struckle	NEW	(Long Range Comm) Report	REAL PROPERTY SECTION LONG RANGE PLANNING AND TECHNOLOGY COMMITTEE

<u>Kennemer</u>	NEW	(Leg) Report	UNIFORM RESIDENTIAL PURCHASE CONTRACT [draft expected Dec. 2004]

Epperson			UNIFORM ELECTRONIC TRANSACTIONS ACT

	NEW	(Leg) Report	[Tulsa County began electronic filing of land documents on August 11, 2004 in County Clerk's offices]

Rheinberger Sargent Folsom	NEW	(Article) Report	POWER OF SALE *There is a need to decide if there it would be useful to adopt a Standard (1) confirming that sales conducted under the Power of Sale Act are valid, if conducted and documented in the record properly, and (2) providing guidance as to how to conduct and document such a sale properly.* [The decision was made in June 2004 to seek an author to write an article on this topic for the OBA Bar Journal issue on real property issues: Jack Wimbish agreed to prepare this article] [issue raised by Karen Howick and Prudence Little]

_____*FEB 19/STROUD*_____

Struckle Orlowski Hardwick	NEW	Feb Report	UNIFORM TRUST ACT *For the fifth (?) year in a row, this Act has been submitted as a Bar-supported bill, and the Real Property Law Section has killed it each year. It is coming up again this year.*

Struckle	NEW	Feb Report	BANKRUPTCY *When can the debtor sell an unencumbered homestead? (e.g., Several sets of statutes and the related Planning Commissions were left out of this Standard.*

Struckle	New	Feb. Report	DUE PROCESS *Booth v. McKnight, 2003 OK 49, raises questions about due process in a probate context.* [Jack Wimbish will write an Article for OBJ]

_____*MAR 19/OKC*_____

==========APPROVED==========

==========UNSCHEDULED==========

Sargent Evans Durbin	13.1-13.8	Unsch	PARTNERSHIP ACT *There is a need to revise the language which was changed last year (2003) for clarity especially focusing on (1) whether to look behind the recorded documents and (2) how far back to look.* [Sargent will attempt to contact Alan Durbin to determine what needed changes have been identified by Durbin]

SUB-COMMITTEE CHAIR T.E.S. ASSIGNMENTS (# of Projects):

Member	TES	Pending	Approved	Unsch'd	Reject
TOTAL	___	___	___	___	___

COMMITTEE OFFICERS:

Chair: Kraettli Q. Epperson, OKC (405) 840-2470 fax: (405) 843-4436
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Sec'y: Barbara Carson, Tulsa (918) 293-2289 fax: (918) 293-2289
barbaracarson@yahoo.com

(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2005\Agenda2005jan)

APPENDIX 3
LIST OF ARTICLES ON-LINE, AUTHORED BY KRAETTLI Q. EPPERSON

KRAETTLI Q. EPPERSON:
PROFESSIONAL LECTURES & PUBLICATIONS:
AVAILABLE ON-LINE
AT WWW.EPPERSONLAW.COM
(Last Revised June 30, 2004)

2004

164. "A Status Report: On-Line Images of Land Documents in Oklahoma County", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (June 11, 2004)

162. "**Real Estate Homesteads in Oklahoma: Conveying and Encumbering Such Interest**", 75 Oklahoma Bar Journal 1357 (May 15, 2004)

161. "Update on Oklahoma Title Examination Standards: Revisions for 2004 (November 14, 2003)", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (February 13, 2004)

2003

160. "Contract Provisions, Abstracting, & Title Examination in Oklahoma", Title Examination in Oklahoma, Lorman Education Services, Oklahoma City, Oklahoma (December 3, 2003)

159. "A Look at Selected Future Changes Likely to Affect the Oklahoma Real Estate Attorney", Emerging Topics in Real Estate Law, OBA Real Property Law Section, Oklahoma City, Oklahoma (November 6, 2003) and Tulsa, Oklahoma (November 7, 2003)

158. "Examinations of the Muniments of Title", Title Law in Oklahoma, National Business Institute, Oklahoma City, Oklahoma (October 29, 2003)

157. "A Look at Selected Future Changes Likely to Affect the Oklahoma Real Estate Attorney", OU/Texas Weekend Legal Update, OBA General Practices Section, Dallas, Texas (October 10, 2003)

156. "Update on Oklahoma Title Examination Standards: Revisions for 2003 (November 22, 2002)", Practical Real Estate Title Skills in Oklahoma, Half Moon, Tulsa, Oklahoma (August 14, 2003)

2002

150. "Update on Oklahoma Title Examination Standards: Revisions for 2002 (November 16, 2001)", Oklahoma Real Estate Titles and Title Insurance, Halfmoon Seminars, Oklahoma City, Oklahoma (August 15, 2002)

2001

143. "Update on Oklahoma Title Examination Standards: Revisions for 2001 (November 17, 2000)", Real Estate Law, Titles, Liens and Mortgages, Foreclosure and Bankruptcy, The Conference on Consumer Finance Law, Oklahoma City, Oklahoma (November 8, 2001)

139A. "Update on Oklahoma Title Examination Standards: Revisions for 2001 (November 17, 2000) and Divorce Related Real Property Issues: Some Insights From the Oklahoma Title Examination Standards", Practical Issues Affecting the Family Law Practitioner, The O.B.A. Family Law Section Seminar, Tulsa, Oklahoma (April 6, 2001) and Oklahoma City, Oklahoma (April 12, 2001)

138. "Oklahoma Residential Property Condition Disclosure Act: Disclosure Statement", Churchill-Brown Realtors, Oklahoma City, Oklahoma (March 13, 2001)

136A. "Update on Oklahoma Title Examination Standards: Revisions for 2001 (November 17, 2000)", New Developments in Real Property, Tulsa Title and Probate Lawyers Association, Tulsa, Oklahoma (January 11, 2001)

2000

136. "Update on Oklahoma Title Examination Standards: Revisions for 2000 (November 12, 1999)", The Conference on Consumer Finance Law, Oklahoma City, Oklahoma (November 2, 2000)

132. "The Changing Face of Real Property With an Emphasis on Title Examination, and Title Assurance", Southern Nazarene University, Bethany, Oklahoma (February 17, 2000)

131. "Oklahoma Residential Property Condition Disclosure Act: An Overview of 60 O.S. §§ 831 et seq", Churchill-Brown & Associates, Oklahoma City, Oklahoma (February 8, 2000)

1999

125. "Update on Oklahoma Title Examination Standards: Revisions for 1999", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 1, 1999)

1998

124. "An Overview of Selected Title Insurance Issues in Oklahoma", The Oklahoma Mortgage Brokers Association, Tulsa, Oklahoma (November 19, 1998)

112. "Update on Oklahoma Title Examination Standards: Revisions for 1998 (Nov. 7, 1997)", The Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 9, 1998)

1997

106. "**Have Judgment Lien Creditors Become 'Bona Fide Purchasers'?**", 68 Oklahoma Bar Journal 1071 (March 29, 1997)

100. "**Mortgage Lenders Must Now Secure Two Judgments to Enforce Their Real Estate Mortgage**", 87 Oklahoma Banker 11 (January 3, 1997)

1995

93. "Update on Oklahoma Title Examination Standards: Revisions for 1996 (Nov. 10, 1995)", Title Examination Workshop (Joint Oklahoma Bar Association and OBA Real Property Law Section Seminar, Tulsa, Oklahoma (December 8, 1995) and Oklahoma City, Oklahoma (December 15, 1995)

92. "Tax Resales: Invisible and Invincible Liens that may be Surviving the Sale -- A Forum for Input for Possible Solutions", Oklahoma City Title Attorney's Association, Oklahoma City, Oklahoma (October 13, 1995)

78. "The History and Direction of Title Examination Standards in America", Presented at: The Arkansas Bar Association 1995 Real Estate Seminar, Hot Springs, Arkansas (March 31-April 1, 1995)

1994

68. "**Corporate Attest, Seal Still Needed For Real Estate Documents**", 84 Oklahoma Banker 17 (February 4, 1994)

67. "A Brief Analysis of USA v. Ward, 985 F.2d 500 (10th Cir. 1993): The Federal Loan Programs' Inextinguishable Mortgage Lien", Presented to the Oklahoma City Commercial and Banking Lawyers Group, Oklahoma City, Oklahoma (January 20, 1994)

1993

62. "Environmental Laws Affecting Real Estate Title," Legal Institute of Pickens County, I.T., Joint Oklahoma Bar Association and Carter County Bar Associations, Ardmore, Oklahoma (May 21, 1993)

1990

46. "**Title Examination Standards in America: A Status Report**," 16 Probate and Property Magazine, ABA Real Property, Probate and Trust Magazine, Sept./Oct. 1990

APPENDIX 4

NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER REPORT

(MORE INFORMATION AVAILABLE ON-LINE AT
www.RealPropertyTitleStandards.org**)**

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER
(Effective July 31, 2004)

STATUS REPORT

State		**Last Revised**		**Standards**		
		Pre-1999	**1999+**	**#Ch.**	**#Stands.**	**#Pgs.**
1.	Arkansas	-	12-20-00	22	110	65
2.	Colorado	-	01-01-03	15	132	55
3.	Connecticut	-	12-31-01	28	140	440
4.	Florida	01-20-95	-	22	152	187
5.	Georgia	-	04-05-03	38	192	131
6.	Idaho[1]	c. 1946	-	-	-	-
7.	Illinois	01-00-77	-	14	26	35
8.	Iowa	-	03-01-00	15	99	129
9.	Kansas	-	02-00-99	23	71	122
10.	Louisiana	-	00-00-01	25	233	99
11.	Maine	-	03-09-04	09	71	98
12.	Massachusetts	-	05-10-04	NA	69	76
13.	Michigan	-	05-00-04	28	252	442
14.	Minnesota	-	06-20-03	NA	111	79
15.	Missouri	05-15-80	-	NA	26	17
16.	Montana	00-00-55	-	NA	76	78
17.	Nebraska	-	01-30-04	16	98	115
18.	New Hampshire	01-01-97	-	13	131	21
19.	New Mexico	00-00-50	-	06	23	05
20.	New York	01-30-76	-	NA	68	16
21.	North Dakota	-	00-00-03	18	188	225
22.	Ohio	-	11-07-03	NA	53	44
23.	Oklahoma	-	11-14-03	35	115	106
24.	Rhode Island	-	07-00-03	14	72	72
25.	South Dakota	-	06-21-03	NA	66	58
26.	Texas	-	09-21-01	14	73	94
27.	Utah	06-18-64	-	NA	59	13
28.	Vermont	-	00-00-03	28	38	31
29.	Washington	09-25-42	-	NA	29	09
30.	Wisconsin	02-00-46	-	NA	15	08
31.	Wyoming	07-01-80	-	22	81	99
Total					***12***	***19***

[1]The Title Standards for this state are not available due to the fact that the standards are too old to find in print.

Prepared by Kraettli Q. Epperson, Attorney-at-Law, OKC, OK
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APPENDIX 5
OKLAHOMA T.E.S. COMMITTEE MEMBERS (FOR PRIOR YEAR)

2004 Title Examination Standards Committee

Kraettli Q. Epperson, Oklahoma City, *Chair*
Linda M. Kulp, Tulsa, *Secretary*

1. Dale L. Astle, Tulsa
2. Barabara L. Carson, Tulsa
3. William Doyle, Tulsa
4. Kraettli Q. Epperson, Oklahoma City
5. James Folsom, Broken Arrow
6. Martha M. Hardwick, Tulsa
7. Linda Kulp, Tulsa
8. Scott McEachin, Tulsa
9. John L. Myles, Oklahoma City
10. Faith Orlowski, Tulsa
11. Henry P. Rheinbuger, Oklahoma City
12. Jack Sargent, Oklahoma City
13. (Jay) Joe J. Struckle, El Reno
14. (Jack) John B. Wimbish, Tulsa