UPDATE ON OKLAHOMA TITLE EXAMINATION STANDARDS: REVISIONS FOR 2006 (effective November 4, 2005)

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 at
"OKLAHOMA CITY REAL PROPERTY LAWYERS ASSOCIATION"

at

OKLAHOMA CITY, OKLAHOMA: January 13, 2006

COPIES PROVIDED COURTESY OF FIRST AMERICAN TITLE

(C:\mydocuments\bar&papers\papers\181 TESupdate(05-06)(OCRPLA).doc)

KRAETTLI Q. EPPERSON
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 (Specific Performance, Condition Disclosure Statement Disputes, Quiet Title Suits, Condemnations, and Foreclosures);
Condo/HOA Representation;
Real Estate Acquisitions (Contracts, Title Exam, 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 Nat'l T.E.S. Resource Center (Director: 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: "Oklahoma Land Titles" course (1982 - Present);
Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor and Contributing Author;
Basye on Clearing Land Titles, Author : Pocket Part Update (1998 – 2000); Contributing Author: Pocket Part Update (2001-Present)
Oklahoma Bar Review faculty: "Real Property" (1998 - 2004);
In-House Counsel, LTOC & AGT (1979-1981)
Urban Planner, OCAP, DECA & ODOT (1974-1979)

SELECTED PUBLICATIONS:
"A Status Report: On-Line Images of Land Documents in Oklahoma County" & "Where Are We Going Next in Electronic Filing", 36 Briefcase (OCBA) 7 & 8 (July & August 2004)
"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

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, The South & Southwest, American Law, American Education, and Emerging Leaders in America

TABLE OF CONTENTS

REPORT

5. OKLAHOMA T.E.S. COMMITTEE MEMBERS (FOR PRIOR YEAR)

I. EXAMINING ATTORNEY'S RESPONSIBILITIES

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.

***

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).*

***

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. In the recent past, 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 for more details in the status of Standards in other States.

III. NEWEST CHANGES TO TITLE STANDARDS

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.

2005 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION OF THE OKLAHOMA BAR ASSOCIATION

PROPOSAL 1:

24.11 IMPROPERLY EXECUTED ASSIGNMENTS OF MORTGAGE.

If a release of mortgage has been properly executed, recorded and acknowledged, the marketability of the title described in the released mortgage will not be affected by the fact that one or more assignments of the released mortgage appearing of record were not executed and/or acknowledged in accordance with law.

Authority: 16 O.S. 2001 § 53.

Comment: This standard is not intended to cure a situation where no assignment exists of record so that the ownership of the mortgage cannot be tracked of record or where the assignment does not contain enough information to establish of record which mortgage is being assigned.

History: The 2005 Report of the Title Examination Standards Committee recommended this standard. 76 O.B.J. 2421 (10/22/05). The Real Property Law Section approved the standard on November 3, 2005 and the House of Delegates adopted it on November 4, 2005. 76 O.B.J. 2608 (11/12/05).

APPENDICES

1. SCHEDULE OF TES COMMITTEE MEETINGS FOR THE CURRENT YEAR
2. LATEST TITLE EXAMINATION STANDARDS COMMITTEE MEETING AGENDA, with Exhibits:
    - G. Abstracts and Examination
    - H. Attorneys Examination
    - I. Surveyors Approving New Legal Descriptions
    - J. Alien Ownership Exculpatory Language
    - K. Simplification of Land Titles Act Validating Tax Deeds
    - L. MERS as “Nominee” and the Issue of Real Party In Interest
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

2006 TES Committee Meeting Schedule

January 21, 2006 - Tulsa

February 18, 2006 - Stroud

March 18, 2006 – OKC

April 15, 2006 - Stroud

May 20, 2006 - Tulsa

June 17, 2006 - Stroud

July 15, 2006 - OKC

August 19, 2006 - Stroud

September 16, 2006 - Tulsa

APPENDIX 2

LATEST T.E.S. COMMITTEE AGENDA

2006 AGENDA
(As of January 9, 2006)

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

Sub-Comm.	Std.	Status	Description

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

JANUARY 21/Tulsa

Orlowski	**NEW**	**Jan. Report**	**ENDING USE OF FORMAL ABSTRACTS AND ATTORNEY EXAMINATIONS TO ISSUE TITLE INSURANCE** ***The Oklahoma Association of Realtors is undertaking a legislative effort to eliminate the need for a formal abstract and an attorney's title opinion for the issuance of title insurance, as currently required in 36 O.S. §5001C & 1983 OK AG 281.*** **[SEE ATTACHMENT]** **[NOTE: STATE SEN. BRIAN CRANE WILL ATTEND THE MEETING IN JANUARY TO SPEAK ON THIS MATTER]**

Wimbish	**NEW**	**Jan. (Leg.) Report**	**JOINDER OF O.T.C. WITHOUT DATE OF DEATH OF NAMED PERSON** ***68 O.S.§801 makes OTC an indispensable party for a Quiet Title or Foreclosure Action, 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? Should you also join the IRS, if you are joining the OTC?*** **[JACK WIMBISH IS CONTACTING THE O.T.C. AND A STATE REPRESENTATIVE TO SEEK A JOINT LEGISLATIVE SOLUTION]**

Orlowski	**NEW**	**Jan. (Leg) Report**	**UNIFORM TRUST ACT** ***For the sixth (?) year in a row, this Act has been submitted as a Bar-supported bill. It is coming up again this year. There are several real estate title related problems with the bill, including (a) introduction of ambiguity as to whether the Memo of Trust is still required and as to its content, and (b) allowing verbal trust agreements creating trusts to hold real property.*** **[A REPORT OF A JAN. 7, 2006 MEETING BETWEEN OPPOSING SIDES WILL BE PRESENTED AT THE JAN. TES MEETING]** **[ORLOWSKI AND KEMPF ARE WORKING WITH JIM HAMILL AND JOHN MYLES.]**

(Epperson?)	**NEW**	**Jan. Report**	**NEW LEGAL DESCRIPTIONS DO NOT GIVE CONSTRUCTIVE NOTICE UNLESS APPROVED BY SURVEYOR** **New legislation, effective Nov. 1, 2005, redefines the "Practice of Land Surveying" (59 O.S.§475.2) to include the "(4) subdivision of land parcels into smaller parcels and/or the preparation of the description thereof". Prior statutes provide (59 O.S.§475.22a) that "It shall be unlawful for the registrar of deeds…to file any …documents within the definition of land surveying which do not have impressed thereon and affixed thereto the personal signature and seal of a professional land surveyor…". Therefore, should examining attorneys treat conveyances of new parcels as not constituting constructive notice, unless accompanied by a surveyor's certification? (raised by Lynn Windal)** **[SEE ATTACHMENT]**

(Epperson?)	**NEW**	**Jan. Report**	**EXCULPATORY LANGUAGE FOR ALIEN OWNERSHIP** **What does "bona fide resident" of the State mean under 60 O.S.§§121-122? Should exculpatory language be added to an attorney's opinion? (raised by Lynn Windel)** **[SEE ATTACHMENT]**

(Epperson?)	**15.2**	**Jan. Report**	**TITLE TO PROPERTY HELD UNDER AN EXPRESS PRIVATE TRUST** **The question was raised as to how many trustees must sign conveyances and encumbrances when there are multiple trustees: only one, a majority, or all.**

Wittrock	**29.2**	**Jan. Report**	**PROTECTION AFFORDED BY THE ACT (SLTA) FOR TAX DEEDS** **The question was raised as to whether the protection of the act is effective as to Tax Deeds, because there appears to be a difference in practice between examiners in Tulsa and OKC.** **(raised by Monica Wittrock)** **[SEE ATTACHMENT]**

(Avery?)	**24.9**	**Jan. Report**	**LAPSED FINANCING STATEMENTS** **It has been noted that all of the authorities cited under this standard have been repealed. The replacement statutes, if any, need to be cited herein.** **(raised by Rickey Avery)** **Also, it might be appropriate to review the other standards for similar obsolescence.**

Kennemer	**NEW**	**Jan. (Leg) Report**	**UNIFORM RESIDENTIAL PURCHASE CONTRACT** **[NOTE: A COPY OF THE FINAL PROPOSED VERSION WILL BE PRESENTED AT THE JAN. TES MEETING]**

Hamill/ Epperson	**NEW**	**Jan. (Leg) Report**	**GENERAL REVIEW OF PENDING REAL PROPERTY LEGISLATION**

McEachin	**15.3**	**Jan. Report**	**MERS** **The question has arisen as to what is proper where the mortgage was held by "MERS as the nominee for ABC". Should title examiners approve title where the foreclosure is conducted for, or the assignment or the release is signed by (a) MERS alone, (b) MERS and ABC, (c) ABC, rather than by MERS for ABC, or (c) MERS for XYZ, rather than by MERS for ABC? There are several cases pending in federal courts and other state courts challenging the concept underlying MERS. Oklahoma County trial court judges are looking more closely at mortgage foreclosures to ensure the paper trail supports the lender's claims of default, who has personal liability under the promissory note, and claims by the lender that it is the current holder of the subject promissory note.** ***[SEE ATTACHMENT]***

Epperson	**NEW**	**Jan. (Leg) Report**	**UNIFORM ELECTRONIC TRANSACTIONS ACT** ***If the County Clerk files for record a scanned copy of an original paper document (or a photocopy or a faxed copy), does it constitute constructive notice? Does such transmission to the County Clerk (of a scanned original document) without using a Registered Certification Authority, followed by such document being filed for record, lead to constructive notice for the document?***

(Epperson?)	**NEW**	**Jan. Report**	**JUDGMENTS/DECREES & CONSTRUCTIVE NOTICE** ***Under the MRTA and under the terms of the Uniform Abstractors Certificate, do documents that are <u>not</u> filed with the County Clerk (e.g., probate proceedings) constitute constructive notice and become part of the official chain of title. Also, if a judgment or decree – affecting title to real property -- is required by statute 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? If so, as of what date? Can you rely upon a decree as part of a chain of title, if it was never recorded in the land records?***

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

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

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

Member	**Pending**
TOTAL	**___**

COMMITTEE OFFICERS:

Chair: Kraettli Q. Epperson, OKC (405) 840-2470 fax: (405) 843-4436
kqelaw@aol.com

Sec'y: Scott McEachin, Jenks (918) 296-0405 fax: (918) 296-3628

scott@mceachinlaw.com

(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2006\Agenda2006jan)

APPENDIX 3

LIST OF PUBLISHED ARTICLES (ON-LINE), AUTHORED BY KRAETTLI Q. EPPERSON

KRAETTLI Q. EPPERSON
PROFESSIONAL PUBLICATIONS

PUBLISHED LIST

(Last Revised January 11, 2006)

2005

179. "A Status Report: On-Line Images and E-Filing of Land Documents in Oklahoma", Consumer Finance Law Quarterly Report, Vol. 59 No. 3, p. 316, Oklahoma City, Oklahoma (Fall, 2005)

2004

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

1997

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

104. "**An Attack by the State Auditor on the '30-Year Abstract'**", 68 Oklahoma Bar Journal 517 (February 22, 1997)

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

1995

87. **"Title Examination Standards: A Second Status Report"**, ABA Land Transactions Group (C-Committees) Newsletter, Number 5, July 1995

86. **"Title Examination Standards: Suggestions on Adopting and Maintaining Standards"**, ABA Land Transactions Group (C-Committees) Newsletter, Number 5, July 1995

82. "**Statute, Practices on Tax Sale Notices Raise Concerns**", 85 Oklahoma Banker 9 (June 9, 1995)

1994

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

1993

66. "**Federal Money Judgement Liens Under the Federal Debt Collection Procedure Act: A 40-Year Super-Lien**," Consumer Finance Law Quarterly Report Vol. 47, No. 4 (Fall 1993)

64. "**Federal Money Judgement Liens Under the Federal Debt Collection Procedure Act: A 40-Year Super-Lien**", 64 Oklahoma Bar Journal 3195 (October 23, 1993)

1992

58. "**Local Real Property Recordings Required For Federal Money Judgements**," 63 Oklahoma Bar Journal 2697 (September 30, 1992)

57. "**Local Real Property Filings Required for Federal Matters-or- The Proposed End of Standard 1.3 Federal Court Certificates**", OBA Real Property Section Newsletter (Summer 1992)

1991

52. "**One Step Beyond: Judicial Creation of a Judgement Lien in Divorce Decrees**," 62 Oklahoma Bar Journal 2631 (September 1991)

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

1989

37. "**Oklahoma Title Examination Standards and Curative Acts Relating to Oil and Gas Interests**," 24 Tulsa L.J. 548 (1989) (with David D. Morgan)

1988

32. "**Judgement Lien Creation Now Requires a Judgment Affidavit**," 59 Oklahoma Bar Journal 3643 (December 1988)

1984

9. "**UCC Fixtures Filings Require An Acknowledgment**," 55 Oklahoma Bar Journal 695 (March 1984)

1983

6. "**Abstract Certificate Officially Changed**," 54 Oklahoma Bar Journal 1713 (June 1983)

1982

3. "**Lenders Mineral Title Insurance: A Mini-Primer**," 53 Oklahoma Bar Journal 3089 (December 1982)

1. "**The Title Standards Committee: A Status Report**," 53 Oklahoma Bar Journal 1827 (July 1982)

(C\MYDOCUMENTS\BAR&PAPERS\PAPERS\PapersList\KQE Published Papers List (3-page))

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, 2005)

STATUS REPORT

State		Last Revised		Standards		
		Pre-2000	2000+	#Ch.	#Stands.	#Pgs.
1.	Arkansas	-	12-20-00	22	110	65
2.	Colorado	-	05-07-05	15	134	71
3.	Connecticut	-	12-31-04	28	140	440
4.	Florida	-	11-00-03	22	152	187
5.	Georgia	-	08-00-05	39	194	144
6.	Idaho[1]	c. 1946	-	-	-	-
7.	Illinois	01-00-77	-	14	26	35
8.	Iowa	-	03-01-00	15	99	129
9.	Kansas	2-00-99	-	23	71	122
10.	Louisiana	-	00-00-01	25	233	99
11.	Maine	-	03-15-05	09	71	98
12.	Massachusetts	-	05-10-04	NA	69	76
13.	Michigan	-	05-00-04	28	252	442
14.	Minnesota	-	06-11-04	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	-	11-12-04	35	115	106
24.	Rhode Island	-	07-00-03	14	72	72
25.	South Dakota	-	06-21-03	NA	66	58
26.	Texas	-	09-00-02	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
(405) 840-2470; kqelaw@aol.com

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

ABSTRACTS AND TITLE EXAMINATIONS REQUIRED FOR TITLE INSURANCE

Oklahoma Statutes Citationized

Title 36. Insurance
Chapter 1
Article Article 50
Section 5001 - Qualifications of Title Insurers.
Cite as: O.S. §, __ __

A. Any foreign or domestic stock insurer authorized by its corporate charter to engage in business as a title insurer shall be entitled to the issuance of a certificate of authority as a title insurer in this state upon meeting the applicable requirements of Article 6 (Authorization of Insurers and General Requirements), except that existing title insurers may have their certificate of authority renewed by maintaining surplus in regard to policyholders of not less than Five Hundred Thousand Dollars ($500,000.00).
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 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 abstracter as defined herein.
Historical Data

Laws 1957, p. 407, § 5001; Laws 1959, p. 138, § 1; Laws 1980, c. 185, § 7, eff. Oct. 1, 1980.

Citationizer© Summary of Documents Citing This Document

Oklahoma Attorney General's Opinions

Cite	*Name*	*Level*
1982 OK AG 46,	*Question Submitted by: The Honorable Dorothy D. Conaghan, Oklahoma House of Representatives, Oklahoma House of Representatives*	*Discussed at Length*
1983 OK AG 281,	*Question Submitted by: The Honorable John L. Clifton, Oklahoma State Senate, Oklahoma State Senate*	*Discussed at Length*

Oklahoma Court of Civil Appeals Cases

Cite	*Name*	*Level*
1991 OK CIV APP 58, 815 P.2d 1219, 62 OBJ 3041,	*American Title Ins. Co. v. M-H Enterprises*	*Discussed*

Citationizer: Table of Authority

None Found.

ATTORNEYS OPINION REQUIRED FOR TITLE INSURANCE

Question Submitted by: The Honorable John L. Clifton, Oklahoma State Senate, Oklahoma State Senate

1983 OK AG 281
Decided: 05/14/1984
Oklahoma Attorney General

Cite as: 1983 OK AG 281, __ __

¶0 The Attorney General has received your request for an official opinion asking, in effect:
1. May an owner's or lender's policy of title insurance be issued in Oklahoma without the examination of a duly certified abstract of title prepared by a licensed and bonded abstractor?
2. Must the abstract, prepared for a title policy, be examined by a licensed attorney before the policy is issued?
3. Must the abstract so certified include copies of the instruments executed at the closing which vest title in the insured owner, any mortgage involved in the transaction and previous mortgage releases filed pursuant to the transaction?
¶1 Your questions deal with a construction of 36 O.S. 5001(C) (1981) which provides as follows:

> "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*." (Emphasis added).

¶2 Your first question has been the subject of at least three prior Attorney General Opinions. We adhere to the views expressed in these opinions that a policy of title insurance may only be issued in the State after the "examination of a duly certified abstract of title prepared by a bonded and licensed abstractor." 36 O.S. 5001(C) (1981); A.G. Opin. No. 82-46 (March 5, 1982); A.G. Opin. No. 80-104 (July 23, 1980); A.G. Opin. No. 78-151 (June 6,1978). This requirement is not met by simply examining or searching instruments of public record. A.G. Opin. No. 82-46, supra.
¶3 This question raises the issue of what constitutes a duly certified abstract of title. As stated in another previous Attorney General Opinion:

> "Abstracts of title are compilations of all public records affecting title to a specific tract of real property which are put together so that an interested party may determine the condition of title without examining the original documents or public records himself. 1 C.J.S. *Abstracts of Title*, 2." A.G. Opin. No. 83-203 (September 27, 1983).

¶4 "Duly-certified" merely refers to the requirement that the abstract contain a concluding certificate from the abstractor. It normally should:

> ". . . describe the land covered; make a clear-cut and plain statement that the abstract of title is a true, correct and complete abstract of all conveyances and other instruments of writing on file or of record in the office of the recorder, or other office or offices where matters relating to titles are to be found." Flick, *Abstract and Title Practice*, 175, pp. 138, 139 (1958).

¶5 Other matters such as judgments, liens, outstanding taxes and special assessments also appear in this certificate. Flick, supra, 175, p.139. It is clearly not required that the entire abstract be recertified each time the abstract is brought to date. It is sufficient that the abstract contain one or more certificates from bonded abstractors, which collectively cover a period of time from the date of the most recent certification back to the patent or conveyance from the government. 16

O.S. (1981) Ch. 1, App. Standard 1.1; 16 O.S. (1983) Ch. 1, App. Standard 19.13(a). The compiled instruments with the abstractor's certificate constitute a "duly-certified abstract of title."

¶6 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).

¶7 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).

¶8 Your final question concerns how complete the abstract must be on which the title policy is based. You ask specifically if the abstract has to include the documents and instruments which vest title in the new owner, the new mortgage and releases of prior mortgages involved in the transaction.

¶9 In the traditional real estate transaction the owner of the real property orders an abstract to be brought to date which he would deliver to the prospective purchaser's attorney. The attorney would examine the abstract and give his opinion as to whether the prospective *seller* had marketable title to the real estate. *Scott v. Jordan*, 155 P. 498 (Okl. 1916); Flick, *Abstract and Title Practice*, 182 (1958). In recent years, however, attorneys are rarely involved in the day to day residential real estate transaction and title insurance has become the primary method of "guaranteeing" title. H. Henley Blair, *The Residential Real Estate Transaction in Oklahoma--What Should Attorneys Do About It*, 53 O.B.A.J. 3059 (December 31, 1982).

¶10 The issuing of a title insurance policy varies from company to company but basically has four (4) steps. *Bar Association of Tennessee, Inc. v. Union Planters Title Guaranty Company*, 326 S.W.2d 767, 772 (Tenn.App. 1959). The first step is "Examination." The abstract is "brought to date" to include all instruments of record up to a time and date sometime after the policy is ordered. As stated previously the title company can perform this step for itself but only a licensed attorney can do the examination. After the examination the title insurance company issues a "title commitment" which specifies the owner of the property to be covered and typically contains requirements to be met before the company will issue the actual policy. *Bar association of Tennessee, Inc.*, supra at 772.

¶11 The second step is "Preparation for Closing." The person ordering the policy then fulfills the requirements of the commitment by obtaining necessary releases of liens or other title encumbrances. During this step all of the instruments required to convey title are drafted along with mortgages involved in the transaction. *Bar Association of Tennessee, Inc.*, supra at 772.

¶12 The third step is the "Closing." All of the parties to the transaction meet together to execute the necessary instruments and disburse the funds to the owner. *Bar Association of Tennessee, Inc.*, supra at 772.

¶13 The fourth and final step is the "Issuance of Policy." The person or persons in charge of the closing, file the instruments of record. These instruments are then examined by the title insurance company to see whether they conform to the requirements set out in the title commitment. If they do, the title insurance company issues its policy.

¶14 As stated previously, Oklahoma statutes mandate that no policy of title insurance may be issued except after the examination of a duly-certified abstract. 36 O.S. 5001(C) (1981). In the opinion of the Attorney General the abstract must be brought to date after the title policy is ordered. The initial examination must be made from this duly-certified abstract before the title company issues its commitment. After this examination, however, the abstract need not be brought to date again after the closing documents are filed. It is sufficient that the title company examine these instruments to see if they meet its requirements and issue the policy. If we were to hold otherwise, every real estate transaction would require *two* examinations of *two* duly-certified abstracts. The statute only requires a single examination of a single abstract. 36 O.S. 5001(C) (1981). A statute must always be given a sensible construction keeping in mind the evils intended to be avoided. *AMF Tubescope v. Hatchel*, 547 P.2d 374 (Okl. 1976). The evil that 36 O.S. 5001(C) seeks to avoid is a title insurance company issuing policies without first examining an abstract compiled by an expert in the field. We deem it sufficient that the abstract be examined once and the closing documents examined thereafter before the policy is issued.

¶15 We adhere to the view expressed by an earlier Attorney General's Opinion that the statutory requirement of an abstract examination in 36 O.S. 5001(C) (1981) ". . . is not satisfied by an examination or certification merely of copies of documents found in a search of the title records." A.G. Opin. No. 82-46, supra. The opinion today merely clarifies that the statutory examination of a duly certified abstract need only be done once.

¶16 It is, therefore, the official opinion of the Attorney General that:

1. Title 36 O.S. 5001(C) (1981) requires that an owner's or lender's policy of title insurance may only be issued after the examination of a duly-certified abstract of title prepared by a bonded and licensed abstractor.

2. A "duly-certified abstract of title" for purposes of 36 O.S. 5001(C) (1981) is an abstract brought to date after the title policy is ordered which contains all the pertinent instruments affecting the real estate and concluding with the certificate of the abstractor verifying its accuracy.

3. The examination of the abstract pursuant to 36 O.S. 5001(C) (1981) must be conducted by a licensed attorney.

4. The abstract examined pursuant to 36 O.S. 5001(C) (1981) need only be done once prior to the issuance of the title insurance company's commitment and does not have to be brought to date, re-certified and examined again to include the documents and instruments executed at the closing.

MICHAEL C. TURPEN
ATTORNEY GENERAL OF OKLAHOMA
THOMAS L. SPENCER
ASSISTANT ATTORNEY GENERAL

Citationizer© Summary of Documents Citing This Document

None Found.

Citationizer: Table of Authority

Oklahoma Statutes Citationized, Title 36. Insurance

Cite	*Name*	*Level*
36 O.S. 5001 ,	*Qualifications of Title Insurers.*	*Discussed at Length*

SURVEYOR APPROVE NEW DESCRIPTIONS

Oklahoma Statutes Citationized
Title 59. Professions and Occupations
Chapter 10 - Engineering and Land Surveying
Article Article I - Engineers
Section 475.22a - Land Surveying Documents - Conditions of Filing
Cite as: O.S. §, __ __

It shall be unlawful for the registrar of deeds or the county clerk of any county or proper public authority to file any map, plat, survey or other documents **within the definition of land surveying** which do not have impressed thereon and affixed thereto the personal signature and seal of a professional land surveyor by whom or under whose direct supervision the map, plat, survey or other documents were prepared.
Historical Data

Added by Laws 1982, SB 616, c. 297, § 23; Amended by Laws 1992, SB 799, c. 165, § 20, emerg. eff. July 1, 1992.

Citationizer© Summary of Documents Citing This Document

Oklahoma Statutes Citationized, Title 59. Professions and Occupations

Cite	*Name*	*Level*
59 O.S. 475.2,	*Definitions*	*Cited*

Citationizer: Table of Authority

None Found.

Oklahoma Statutes Citationized
Title 59. Professions and Occupations
Chapter 10 - Engineering and Land Surveying
Article Article I - Engineers
Section 475.2 - Definitions
Cite as: O.S. §, __ __

As used in Section 475.1 et seq. of this title:

***

7. a. "Practice of land surveying" means any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, methods of measurement, and the law for the determination and preservation of land boundaries. "Practice of land surveying" includes, without limitation:
(1) restoration and rehabilitation of corners and boundaries in the United States Public Land Survey System or the subdivision thereof,
(2) obtaining and evaluating evidence for the determination of land boundaries,
(3) determination of the areas and elevations of land parcels,
(4) subdivision of land parcels into smaller parcels and/or the preparation of the descriptions thereof,
(5) measuring and platting underground mine workings,
(6) preparation of the control portions of geographic information systems and land information systems,
(7) establishment, restoration, and rehabilitation of land survey monuments and bench marks,
(8) preparation of land survey plats, condominium plats, monument records, and survey reports,
(9) surveying, monumenting, and platting of easements, and rights-of-way,
(10) measuring, locating, or establishing lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes,
(11) geodetic surveying, and
(12) any other activities incidental to and necessary for the adequate performance of the services described in this paragraph.

***

Historical Data

Added by Laws 1968, SB 524, c. 245, § 2, emerg. eff. April 26, 1968; Amended by Laws 1982, SB 616, c. 297, § 2; Amended by Laws 1992, SB 799, c. 165. § 2, emerg. eff. July 1, 1992 (superseded document available); Amended by Laws 1999, SB 752, c. 74, § 1, eff. November 1, 1999 (superseded document available); Amended by Laws 2005, HB 1607, c. 115, § 2, eff. November 1, 2005 (superseded document available).

Citationizer© Summary of Documents Citing This Document

Oklahoma Statutes Citationized, Title 59. Professions and Occupations

Cite	*Name*	*Level*
59 O.S. 46.28,	*Applicability of Act*	*Cited*
59 O.S. 475.2,	*Exceptions*	*Cited*

Citationizer: Table of Authority

Oklahoma Statutes Citationized, Title 59. Professions and Occupations

Cite	*Name*	*Level*
59 O.S. 475.1,	*Registration as Engineer or Land Surveyor - Privilege*	*Discussed at Length*
59 O.S. 475.22a ,	*Land Surveying Documents - Conditions of Filing*	*Cited*

Oklahoma Statutes Citationized

itle 59. Professions and Occupations
Chapter 10 - Engineering and Land Surveying
Article Article I - Engineers
Section 475.22 - Exceptions
Cite as: O.S. §, __ __

Section 475.1 et seq. of this title shall not be construed to prevent:
1. Other Professions. The practice of any other legally recognized profession;
2. Temporary Permit:
a. Professional engineer. The practice or offer to practice engineering by a person not a resident of or having no established place of business in this state is allowed; provided, such person is legally qualified by licensure to practice engineering, as defined in Section 475.2 of this title, in the applicant's own state or country and who has made application for licensure to this Board. Such person shall make application for temporary permit to the Board, in writing, and after payment of a temporary permit fee may be granted a written permit to perform a particular job for a definite period of time, to expire the earliest of the issuance of a license by this Board, the rejection of the application for licensure or a time limit stated in the temporary permit; provided, however, no right to practice engineering shall accrue to such applicant by reason of a temporary permit for any works not set forth in said permit, and
b. Professional land surveyor. The practice of land surveying under a temporary permit by a person licensed as a land surveyor in another state is not considered to be in the best interest of the public and therefore shall not be granted; and
3. Employees and subordinates. The work of an employee or a subordinate of a person holding a certificate of licensure under Section 475.1 et seq. of this title, or an employee of a person practicing lawfully under paragraph 2 of this section is allowed; provided, such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of and verified by a person holding a certificate of licensure under Section 475.1 et seq. of this title or a person practicing lawfully under paragraph 2 of this section.
Historical Data

Added by Laws 1968, SB 524, c. 245, § 22, emerg. eff. April 26, 1968; Amended by Laws 1982, SB 616, c. 297, § 22; Amended by Laws 1992, SB 799, c. 165, § 19, emerg. eff. July 1, 1992; Amended by Laws 2005, HB 1607, c. 115, § 21, eff. November 1, 2005 (superseded document available).

Citationizer© Summary of Documents Citing This Document

Oklahoma Attorney General's Opinions

Cite	*Name*	*Level*
1983 OK AG 266,	*Question Submitted by: Charles L. Kimberling, Chairman, Board of Registration for Professional Engineers and Land Surveyors, Board of Registration for Professional Engineers and Land Surveyors*	*Discussed at Length*

Citationizer: Table of Authority

Oklahoma Statutes Citationized, Title 59. Professions and Occupations

Cite	*Name*	*Level*
59 O.S. 475.1,	*Registration as Engineer or Land Surveyor - Privilege*	*Discussed at Length*
59 O.S. 475.2,	*Definitions*	*Cited*

ALIEN OWNERSHIP

Oklahoma Statutes Citationized

Title 60. Property
Chapter 3
Section 121 - Ownership of Personal and Real Property by Aliens.
Cite as: O.S. §, __ __

No alien or any person who is not a citizen of the United States shall acquire title to or own land in the State of Oklahoma, except as hereinafter provided, but he shall have and enjoy in the State of Oklahoma such rights as to personal property as are, or shall be accorded a citizen of the United States under the laws of the nation to which such alien belongs, or by the treaties of such nation with the United States, except as the same may be affected by the provisions of this act or the Constitution of this state.
Historical Data

R.L. 1910, § 6646.

Citationizer© Summary of Documents Citing This Document

Oklahoma Supreme Court Cases

Cite	*Name*	*Level*
1981 OK 27, 630 P.2d 1253,	*State ex rel. Cartwright v. Hillcrest Investments, Ltd.*	*Cited*

Citationizer: Table of Authority

None Found.

Oklahoma Statutes Citationized

Title 60. Property
Chapter 3
Section 122 - Inapplicability of Article.
Cite as: O.S. §, __ __

This article shall not apply to lands now owned in this state by aliens so long as they are held by the present owners, nor to any alien who is or shall take up bona fide residence in this state: and any alien who is or shall become a bona fide resident of the State of Oklahoma shall have the right to acquire and hold lands in this state upon the same terms as citizens of the State of Oklahoma during the continuance of such bona fide residence of such alien in this state: Provided, that if any such resident alien shall cease to be a bona fide inhabitant of this state, such alien shall have five (5) years from the time he ceased to be such bona fide resident in which to alienate such lands.

Historical Data

R.L. 1910, § 6647.

Citationizer© Summary of Documents Citing This Document

None Found.

Citationizer: Table of Authority

None Found.

Oklahoma Statutes Citationized

Title 60. Property
Chapter 3
Section 124 - Alien Holding Lands in Contravention to Provisions of This Article.
Cite as: O.S. §, __ __

Any alien who shall hereafter hold lands in the State of Oklahoma in contravention of the provisions of this article, may nevertheless convey the fee simple title thereof at any time before the institution of escheat proceedings as hereinafter provided: Provided, however, that if any such conveyance shall be made by such alien either to an alien or a citizen of the United States in trust, and for the purpose and with the intention of evading the provisions of this article, or the provisions of the Constitution of this state, such conveyance shall be null and void, and any such lands so conveyed shall be forfeited and escheated to the state absolutely.

Historical Data

R.L. 1910, § 6649.

Citationizer© Summary of Documents Citing This Document

None Found.

Citationizer: Table of Authority

None Found.

SIMPLIFICATION OF LAND TITLES ACT

Oklahoma Statutes Citationized

Title 16. Conveyances
Chapter 1
Section 62 - Purchasers for Value of Real Estate - Reliance upon Status of Title as Reflected by County Records and by Decrees and Judgements of Courts.
Cite as: O.S. §, __ __

(a) Any purchaser for value acquiring an interest in real estate from one who claims such interest, immediately or remotely, under a conveyance of record for ten (10) or more years in the records of the county wherein the land is located prior to such purchase shall acquire a valid and marketable title to such interest as against any person claiming adversely to such recorded conveyance for any of the following reasons: (1) that such conveyance was executed by an incompetent person, unless the county court records in the county wherein the land is located, or the county records therein, reflect the appointment of a guardian prior to said deed, or a judicial determination of the incompetency of the grantor, in which event Sections 61 through 66 [16-61] [16-66] of this title shall not apply, (2) that such conveyance was executed by a corporation to an officer thereof, which fact may or may not appear on the face of the deed, without proper authority therefor being had by the officers executing said conveyance, (3) that such conveyance was executed by an attorney in fact under a recorded power of attorney which power had terminated by reason of matters not affirmatively shown in the county records, or (4) that such conveyance was never delivered; Provided, however, this section shall not apply as against such person claiming adversely to any such conveyance for any of the foregoing reasons if prior to such purchase, or within one (1) year from October 27, 1961, the effective date of Sections 61 through 66 [16-61] [16-66] of this title, or from the effective date of Section 62, [16-62] as amended, of this title, whichever later occurs, such person shall have filed of record in the county wherein the land is located a notice setting forth his claim and the basis thereof; and provided, further, that this section shall not apply as against any person in possession of the land either by occupancy or by occupancy of a tenant at the time such purchaser acquires his interest.
(b) Any purchaser for value acquiring an interest in real estate from one who claims such interest, immediately or remotely, by or through a conveyance from one purporting therein to be a guardian, executor, or administrator, which conveyance has been of record for ten (10) or more years in the county wherein said land is located prior to such purchase, and which conveyance either has the approval of the court endorsed upon it, or has been confirmed by an order of the court, shall acquire a valid and marketable title to such interest to the full extent that such conveyance purports to convey the same as against any of the following persons: (1) any ward or wards named in said conveyance, his or their heirs, devisees, representatives, successors, or assigns, (2) the State of Oklahoma or any other person claiming under the estate of any decedent named in said conveyance, the heirs, devisees, or representatives of such decedent, their successors, or assigns, or any creditors of said decedent; Provided, however, that this section shall not apply to any person mentioned in (1) or (2) above who for any reason claims adversely to such conveyance, or contends that such conveyance did not divest him of his interest as purported by such conveyance if prior to such purchase, or within one (1) year from October 27, 1961, the effective date of Sections 61 through 66 [16-61] [16-66] of this title, or from the effective date of Section 62, [16-62] as amended, of this title, whichever is the later, such person shall file of record in the county wherein the land is located a notice setting forth his claim and the basis thereof; Provided, further, this section shall not apply as against any person in possession of the land, by occupancy or by occupancy of a tenant, at the time such purchaser acquires his interest.
(c) Any purchaser for value acquiring an interest in real estate from one who claims such interest, immediately or remotely, by or through (1) any decree of distribution or of partition in a decedent's estate entered by and of record in a court of the county wherein the land is located for a period of ten (10) years prior to such purchase, or (2) any such decree entered by a court for any county in

this state which decree has been of record in the county wherein the decree was entered or in the deed records of any county or counties in which any part of the land or lands is located for a period of ten (10) years prior to such purchase, shall acquire a valid and marketable title to such interest as against any claim or interest of the estate of said decedent or any heir or devisee, his successors or assigns, of said decedent or any creditors of said decedent; Provided, however, this section shall not apply if prior to such purchase, or within one (1) year from October 27, 1961, the effective date of Sections 61 through 66 [16-61] [16-66] of this title, or from the effective date of Section 62, [16-62] as amended, of this title, whichever later occurs, such heirs, devisee, or representative of such estate files of record in the county wherein the land is located a notice setting forth the nature of his claim; Provided, further, this section shall not apply as against any person claiming adversely to such decree who is in possession of the land by occupancy or by occupancy of a tenant, at the time said purchaser acquires his interest.

(d) Any purchaser for value acquiring an interest in real estate from one who claims such interest, immediately or remotely, by or through any of the following muniments: (1) a sheriff's or marshal's deed executed pursuant to an order of a court having jurisdiction over the land affected confirming a judicial sale or directing the issuance of such deed, (2) any final judgment of a court having jurisdiction over the land affected determining and adjudicating the ownership of such land or any interest therein or partitioning same, (3) any conveyance by a receiver executed pursuant to an order of any court having jurisdiction and directing issuance thereof or directing a sale of such land or any interest therein, (4) any conveyance executed by a trustee or purported trustee referring to a trust agreement or referring to named beneficiaries or otherwise indicating the existence of an express trust where the trust agreement has not been recorded in the county where the land is situated, (5) a purported certificate tax deed or resale tax deed executed by the county treasurer of the county wherein the land is located; which muniment, if a conveyance has been of record in the county wherein the land is situated for a period of ten (10) years prior to such purchase, or, if a judgment has been entered for a period of ten (10) years prior to such purchase and, where such judgment is entered by a court outside the county where the land affected is located, has been recorded in the records of the court clerk or county clerk of the county in which such land is located, shall acquire a valid and marketable title to such interest as against the claims of the following: (A) any person or the heirs, devisees, personal representatives, successors or assigns of such person who was named as a defendant in the judgment preceding the sheriff's or marshal's deed referred to in subparagraph (1) above and whose rights or claims were not preserved by the terms of such judgment and who claims an interest by reason of any defect, jurisdictional or otherwise, in the proceedings resulting in such judgment, (B) any person or the heirs, devisees, personal representatives, successors or assigns of such person who was named as a defendant in the judgment referred to under subparagraph (2) above and whose rights or claims were not preserved by the terms of such judgment and who claims an interest by reason of any defect, jurisdictional or otherwise, in the proceedings resulting in such judgment, (C) any person or the heirs, devisees, personal representatives, successors or assigns of such person who was named as a defendant or owner or party in interest in the proceedings referred to in subparagraph (3) above, (D) any person or the heirs, devisees, personal representatives, successors or assigns of such person who claims as a settlor, trustee or beneficiary or by, through or under such settlor, trustee or beneficiary of the trust referred to in subparagraph (4) above, (E) any and all owners or claimants of such land or interest therein whose ownership or claim originated prior to such deeds as are referred to in subparagraph (5) above and the heirs, devisees, personal representatives, successors or assigns of such owners or claimants; Provided, however, this section shall not apply as against any such person claiming adversely to such muniments set forth hereinabove if prior to such purchase, or within one (1) year from October 27, 1961, the effective date of Sections 61 through 66 [16-61] [16-66] of this title, or from the effective date of Section 62, [16-62] as amended, of this title, whichever later occurs, such person shall have filed of record in the records of the county wherein the land is located a notice setting forth his claim and the basis thereof; Provided, further, that this section shall not apply against any person claiming adversely to such muniment who is in possession of the land by occupancy or by occupancy of a tenant at the time said purchaser for value acquires his interest. The State of Oklahoma and its political subdivisions or a public service corporation or transmission company which has facilities of service installed on, over, across or under any part

of the land shall, to that extent, be deemed to be in possession thereof for purposes of the foregoing provision.

Historical Data

Laws 1961, p. 192, § 2; Laws 1973, c. 184, § 1, operative Oct. 1, 1973.

Citationizer© Summary of Documents Citing This Document

Oklahoma Court of Civil Appeals Cases

Cite	*Name*	*Level*
1980 OK CIV APP 32, 614 P.2d 582,	*Pittman v. Cottonwood School Dist. No. 4, Coal County*	*Cited*

Oklahoma Statutes Citationized, Title 16. Conveyances

Cite	*Name*	*Level*
16 O.S. 62 ,	*Purchasers for Value of Real Estate - Reliance upon Status of Title as Reflected by County Records and by Decrees and Judgements of Courts.*	*Discussed at Length*

Citationizer: Table of Authority

Oklahoma Statutes Citationized, Title 16. Conveyances

Cite	*Name*	*Level*
16 O.S. 61 ,	*Purposes of Act.*	*Discussed at Length*
16 O.S. 62 ,	*Purchasers for Value of Real Estate - Reliance upon Status of Title as Reflected by County Records and by Decrees and Judgements of Courts.*	*Discussed at Length*
16 O.S. 66 ,	*Simplification of Real Estate Transactions.*	*Discussed at Length*

29.2 PROTECTION AFFORDED BY THE ACT

The Simplification of Land Titles Act, 16 O.S. §§ 61-63, 66 (§§ 64-65 repealed effective April 10, 1980), protects any purchaser for value, with or without actual or constructive notice, from one claiming under a conveyance or decree recorded or entered for ten (10) years or more in the county, as against adverse claims arising out of:

A. (1) Conveyances of incompetent persons unless the county or court records reflect a determination of incompetency or the appointment of a guardian, (2) corporate conveyances to an officer without authority, (3) conveyances executed under recorded power of attorney which has terminated for reasons not shown in the county records, (4) nondelivery of a conveyance.

B. Guardian's or personal representative's conveyances approved or confirmed by the court as against (1) named wards, (2) the State of Oklahoma or any other person claiming under the estate of a named decedent, the heirs, devisees, representatives, successors, assigns or creditors.

C. Decrees of distribution or partition of a decedent's estate as against the estates of decedents, the heirs, devisees, successors, assigns or creditors. For decrees of distribution or partition which cover land in a county other than the county in which such decrees are entered and recorded, 16 O.S. § 62(c) (2) does not require that they also be recorded in the county in which the land is located.

D. (1) Sheriff's or marshal's deeds executed pursuant to an order of court having jurisdiction over the land, (2) final judgments of courts determining and adjudicating ownership of land or partitioning same, (3) receiver's conveyances executed pursuant to an order of any court having jurisdiction, (4) trustee's conveyances referring to a trust agreement or named beneficiaries or indicating a trust where the agreement is not of record, (5) certificate tax deeds or resale tax deeds executed by the county treasurer, as against any person, or the heirs, devisees, personal representatives, successors or assigns of such person, who was named as a defendant in the judgment preceding the sheriff's or marshal's deed, or determining and adjudicating ownership of or partitioning land, or settlor, trustee or beneficiary of a trust, and owners or claimants of land subject to tax deeds, unless claimant is in possession of the land, either personally or by a tenant, or files a notice of claim prior to such purchase, or within "one year from October 27, 1961, the effective date of 16 O.S. §§ 61-66 or from October 1, 1973, the effective date of 16 O.S. § 62 as amended in 1973." The State of Oklahoma and its political subdivisions or a public service corporation or transmission company with facilities installed on, over, across or under the land are deemed to be in possession.

Authority: 16 O.S. §§ 62 & 66.

History: The 1962 Real Property Committee Report recommended the adoption of this standard, see Recommendation (2), 33 O.B.A.J. 2157 (1962) and Exhibit B, *id*. at 2163. Approved by Real Property Section and House of Delegates, *id*. at 2469, November 29, 1962.

The 1980 Title Examination Standards Committee recommended changes in the standard to reflect the broadening effect made in legislative changes of 1973 and 16 O.S. § 62, 51 O.B.J. 2726, 2728. The Real Property Section, on December 3, 1980, made some changes in style but also deleted the word "county" before "court records" in "A. (1)" and added the last sentence in "C." As amended, the standard was approved by the Real Property Section, December 3, 1980, and adopted by the House of Delegates, December 5, 1980.