UPDATE ON OKLAHOMA TITLE AUTHORITY: STATUTES, CASES, ATTORNEY GENERAL OPINIONS, & TITLE EXAMINATION STANDARDS: REVISIONS FOR 2006 (covering June 1, 2005 to May 31, 2006; Plus TES for 2007)

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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*;
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Okla. Bar Assn. 1990 Golden Gavel Award: *Title Examination Standards Committee;*
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I.INTRODUCTION

The determination of the existence and the holder of “valid” title (i.e., enforceable between the parties), and “marketable” title (i.e., determinable “of record”) to a parcel of real property, requires the application of the current law of the State where the land is located. (60 O.S.§21)

The following materials reflect a listing of selected changes in the law of Oklahoma related to real property title issues, as of May 31, 2006, including (1) statutes enacted during the most recent State legislative session, (2) cases from the Oklahoma Supreme Court or the Court of Appeals over the 12 months preceding May 31, 2006, (3) opinions from the Oklahoma Attorney General, and (4) Oklahoma Title Examination Standards adopted in November 2006.

II. STATUTORY CHANGES

(see: www.lsb.state.ok.us)

A. TAX CERTIFICATES

HB 2361 (Eff. 7-1-06) This amendment to the existing statutes reduces the maximum period of time for the holder of an October Tax Sale Certificate to request the County Treasurer to issue a Tax Certificate Deed, after the 2-year redemption period has lapsed, from 5 years to 1 year. (See: 68 O.S.§3117)

B. LEGAL DESCRIPTIONS

HB 2530 (Eff. 7-1-06) This amendment to the existing statutes restores the legal ability of non-surveyors to draft legal descriptions for newly carved out parcels of land, so long as no new "monuments" (such as survey pins) are placed. (See: 59 O.S.§475.2(7)(a)(4))

C. ABSTRACTORS/TITLE INSURANCE

HB 3009 (Eff. 7-1-06) This amendment to the existing statutes: (1) authorizes the State Auditor to levy fines on abstactors if the time taken to prepare an abstract or abstract extension is too long, (2) allows the use of a prior owners title insurance policy as a beginning point for the creation of a supplemental abstract for the issuance of a new title insurance policy, (3) and expressly states, for the first time, that the examination of an abstract for the issuance of title insurance requires that such "examination" must be conducted by an attorney licensed in the State of Oklahoma. Previously the statute was silent on who must do the opinion, although a prior attorney generals' opinion had concluded that such examination must be done by an attorney. This legislation dropped the proposed provisions calling for (a) the regulation of escrow closers, and (b) the

allowance of the creation of a new abstractor's title plant based on an incomplete set of county clerk and court clerk records. (See: 36 O.S.§5001; 74 O.S.§§227.10, 227.13, 227.18, 227.20, 227.21, 227.25, & 227.28; 1983 OK AG 281)

D. REALTORS LIENS

SB 876 (Eff. 11-1-06) This legislation allows, for the first time, the creation of a self-authenticated lien the land being sold for the unpaid commission for a Commercial Real Estate Broker. (See: 42 O.S.§§201 et seq)

E. JOINDER OF OKLAHOMA TAX COMMISSION

SB 1435 (Eff. 11-1-06) This amendment to the existing statutes makes it permissible to join the Oklahoma Tax Commission in a quiet title action, or similar lawsuit, to extinguish any claim for an estate tax lien, even where whether the death occurred, the date of death, and the location of the death are all unknown. Previously, under the existing statutes, the OTC would regularly successfully have itself dismissed from any lawsuit where those three items of information were unknown, leaving a cloud on the title. (See: 68 O.S.§801)

F. LOT SPLIT EXPANSION

SB 1972 (Eff. 11-06) This amendment to the existing statutes expands the requirement to have municipal approval given for legal descriptions on conveyances in Tulsa which cover a parcel which is smaller than a specified size (i.e., 5 acres). The expansion requires such "lot split" approval for any conveyances which exceed the minimum size, but which leave a "remainder" tract which is smaller than the prescribed size. (See: 19 O.S.§§863.1 et seq)

III. CASE LAW CHANGES

A. EQUITABLE ESTOPPEL & LACHES

1. The appeals court provides a discussion of elements of equitable estoppel and laches where land was conveyed to a non-existent entity, and, 10 years later, the brothers of the grantor formed a partnership using the name of the grantee, and claimed to be the grantee. When the grantor sought to quiet the title, the appeals court reversed the trial courts' summary judgment in favor of the partners who formed the belated partnership, directing the trial court to take further evidence in the matter. **John R. Sullivan v. Buckhorn Ranch et al, (2005 OK 41--June 14, 2005)**

2. The appeals court sustained the trial court's summary judgment, based on equitable estoppel and laches, in favor of Chesapeake who "forgot" about an agreement with Gungoll. **Chesapeake Operating, Inc. v. Carl E. Gungoll Exploration, Inc. (2005 OKCIV APP 45—June 1, 2005)**

B. ATTORNEYS FEES

On appeal, the holder of a second mortgage, who was omitted from the initial foreclosure and who initiated and successfully completed a second foreclosure, was granted attorneys fees under 42 O.S.§176. **Robey v. Long Beach Mortgage Corp. (2005 OK 64—Sep. 20, 2005)**

C. BANKRUPTCY STAY OF APPEAL TIME

1. The State court appeal time challenging a State trial court decision, granting a party's request for the enforcement of a right to a driveway, is stayed/tolled pending the completion of, or the lifting of the stay of, a pending bankruptcy of the losing/appealing party. **Kerr v. England (2005 OK CIV APP 71—Sep. 7, 2005)**

2. The Oklahoma Supreme Court held that a pending bankruptcy of a debtor delays and tolls the 5-year filing deadline to keep a judgment lien alive against that debtor, but also found that filing of a Notice of Renewal of a Judgment by the creditor, to keep the judgment and judgment lien alive, does not violate the automatic stay. **3M Dozer Service, Inc. v. Baker (2006 OK 28—May 2, 2006)**

D. CONDEMNATION VALUATION

On appeal, it was determined that the date for valuation of the condemned land is the date that the condemnor pays the commissioner's award to either the court or the landowner (herein the landowners' attorney put the funds into his escrow account). This was so, even though the condemnor did not take immediate possession of the land, but decided to await the outcome of the appeal. **State of Oklahoma ex rel Dept. of Transp. V. Post & Biswell (2005 OK 69—Oct. 11, 2005)**

E. POOLING

On appeal, an existing pooling order was left intact because an effort by new lessees to re-pool the formations subject to the prior pooling order was deemed an impermissible collateral attack on the initial order. **Harding & Shelton, Inc. v. Sundown Energy, Inc., et al (2006 OK CIV APP 12—Jan. 20, 2006)**

F. TAX SALE

1. It was held that while the holder of a Tax Certificate can assign the tax sale certificate to another person, he cannot assign it once he has given the statutory notice to the owner that (1) the 2-year redemption has passed, and (2) he is about to ask the county for a deed. **Bruce Holt et al v. Verleria Baker et al (2005 OK CIV APP 107—Sep. 16,**

2005)

2. It was affirmed that the holder of a valid Resale Tax Deed prevailed over a set of adverse possessors (non-record holders) who occupied the land (a stream bed) over 15 years prior to such sale even though the adverse possessors did not receive mailed or other personal advance notice of either the Certificate Sale or Resale, other than publication notice by the county advising of the anticipated certificate sale and resale. **Chris Johnson et al v. Julia August et al (2005 OK CIV APP 97—Oct. 25, 2005)**

3. Summary judgment in favor of a buyer of a Resale Tax Deed was reversed because the address used by the county to give notice of the certificate sale and resale was wrong, and there was no proof of delivery (i.e., a signed "green" card) or non-delivery, for either sale. In addition, the county knew of the landowners' true address and failed to use it. Therefore, no actual notice was given, and the notice was defective. **Walnut Grove Development, LLC v. Gayle Hooper (unreported, 77 OBJ 1342, 4-22-06)**

G. MARKETABLE RECORD TITLE ACT

It was held that the current holder of a mineral interest under a series of mineral deeds had the senior title, in a quiet title action filed by the holder of a deed covering both the surface and minerals, because the severed mineral interest holder's claim was established under the Marketable Record Title Act wherein he relied on a mineral deed that was filed at least 40 years before the quiet title action was filed, with no intervening notices or competing conveyances. **Rocket Oil and Gas Company et al v. Elias B. Donabar et al**

(2005 OK CIV APP 111—Nov. 28, 2005)

G. ATTORNEY GENERAL OPINIONS

(none)

H. TITLE EXAMINATION STANDARDS CHANGES

A. **EXAMINING ATTORNEY'S RESPONSIBILITIES**

1. 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)

As noted above, under the discussion of new Statutes, 36 O.S. Section 5001 was amended, effective July 2007, to specifically require the examination described in that Section to be conducted by a licensed Oklahoma attorney, thereby prohibiting laymen and non-Oklahoma licensed attorneys from undertaking title exams for title insurance purposes.

2. LIABILITY OF TITLE EXAMINERS TO NON-CLIENTS

While there is no foolproof way to avoid liability to non-clients, it is usually a good practice to have both the inside address of the title opinion (i.e., the addressee) and limiting language, elsewhere in the opinion, expressly designate the sole person or company expected 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.

3. 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, <u>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.</u> 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)

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

B. NEED FOR STANDARDS

1. 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 “precedential”. 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.

2. 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.

C. 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.

2006 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2006, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 17, 2006. Additions are underlined, deletions are by ~~strikeout~~.

The Title Examination Standards Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Oklahoma City on Thursday, November 16, 2006.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 17, 2006. Proposals adopted by the House of Delegates become effective immediately.

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

Proposal 1.

The committee recommends amending Standard 24.9 be amended to reflect recent amendments made to Article 9 of the Oklahoma version of the Uniform Commercial Code.

A financing statement which constitutes a "fixture filing" under ~~12A O.S. §§9-313(1)(b) and 9-401A~~ 12A O.S. §1-9-502(a) and (b) other than:

A. a real estate or oil and gas leasehold mortgage which is effective as a "fixture filing" under ~~12A O.S. § 9-402(5) or (6)~~ 12A O.S. § 1-9-301, and

B. a financing statement filed with the Secretary of State under ~~12A O.S. § 9-403~~ 12A O.S. § 1-9-501 which states that the debtor is a transmitting utility, and

C. a financing statement filed in connection with a public-transaction or a manufactured-home transaction if it indicates that it is filed in connection with a public-finance transaction or a manufactured-home transaction 12A O.S. § 1-9-515(b), may be disregarded as lapsed provided:

1. five (5) years have elapsed from either

(a) the date of filing such financing statement, or

(b) the date of the commencement of the most recent five-year period through which the financing statement has been continued, and

2. no continuation statement has been filed in the office of the county clerk in the county for which the financing statement was originally filed within the six (6) months prior to the expiration of the current five-year period of such financing statement.

Authority: ~~12A O.S. § 9-401A and § 9-403~~ 12A O.S. § 1-9-502 and 12A O.S. § 1-9-515

Comment: 1 A continuation statement may be filed only within six (6) months prior to the expiration of the current five-year period of the financing statement, ~~12A O.S. § 9-403~~ (3) 12A O.S. § 1-9-515(d).

~~2. A security interest perfected by filing a financing statement remains perfected until sixty (60) days after termination of insolvency proceedings commenced by or against the debtor or until expiration of the current five year period of the financing statement, whichever later occurs, 12A O.S. § 9403 (2).~~

2. A record of a mortgage that is effective as a financing statement filed as a fixture filing remains effective until the effectiveness of the mortgage terminates under real property law, 12A O.S. § 1-9-515(g).

Proposal 2.

The committee recommends adding a new Standard 24.12 to give examiners guidance in the situation where mortgages or other instruments are granted to or assigned to nominees or agents, including but not necessarily limited to transactions involving the Mortgage Electronic Registration Systems, Inc. ("MERS").

Standard 24.12

A. An examiner shall consider the lien of a mortgage held of record by a nominee or agent assigned or released if the assignment or release:

1. is executed by the nominee or agent, where the beneficial owner or principal is not identified of record; or

2. is executed by the nominee or agent in the name of the beneficial owner or principal, where the beneficial owner or principal is identified of record; or

3. is executed by the beneficial owner or principal, where the beneficial owner or principal is identified of record, even if the lien of the mortgage is vested of record in the nominee or agent; or

4. is executed by either the beneficial owner or the nominee, as nominee, if the lien of the mortgage is vested in both the beneficial owner and the nominee; or

5. is executed by either the principal or the agent, as agent, if the lien of the mortgage is vested of record in both the principal and the agent.

B. If the mortgage lien is granted to a person or entity "as nominee" or "as agent," the lien of the mortgage is vested or vested in such person or entity. If the identity of the beneficial owner or principal is not disclosed of record, then the examiner need not inquire as to the identity of the beneficial owner or principal. In such situations, the examiner may rely on the instruments executed by the nominee or agent as record holder of the mortgage lien.

Comment 1: In its consideration of this standard, the Committee has taken notice of the evolving nature of lending practices concerning the wide distribution of interests in the debt represented by mortgage notes and derivative interests created only from various parts of the debt represented by such notes. While the Committee is aware of the old adage that the lien follows the debt, the Committee is also aware that lenders are becoming more apt to designate one party to hold record title to the lien of the mortgage in order to facilitate commerce in these multiple and/or derivative interests in the debt. However, the Committee is also cognizant of the importance placed on the ability of the public to rely on the public record with respect to conveyances of and encumbrances upon real estate. Therefore, in adopting the foregoing standard, the Committee has been diligent in its efforts to balance the facilitation of commerce with the requirement that certain transactions must be fully memorialized in the public record.

Proposal 3.

The committee recommends amending Standard 25.5 to reflect the change in the law as reflected by the amendment of 68 O.S. § 815(C) which became effective on November 1, 2006.

B. DURATION.

The Oklahoma estate tax lien continues as a lien on all of the property in the decedent's gross estate, except for the categories of property as described in A above, for ten (10) years from the death of the decedent, unless an Order releasing taxable estate or Order exempting the estate from estate tax is obtained from the Oklahoma Tax Commission as to the property in question.

Subsequent to the lapse of ten (10) years after the death of any decedent ~~other than a restricted Indian~~, title acquired through such decedent shall be considered marketable as to Oklahoma inheritance, estate or transfer tax liability unless prior thereto a tax warrant filed by the Oklahoma Tax Commission appears of record. If the Oklahoma Tax Commission causes a tax warrant to be filed of record within said ten (10) year period, then a release of that tax warrant must be obtained and filed of record.

Proposal 4.

The committee recommends amending Standard 35.3 to reflect the change in the law as reflected by the amendment of 19 O.S. § 863.10 which became effective on November 1, 2006.

B. Within a county having within its boundaries more than fifty percent of the incorporated area of a city having a population of 180,000 or more, where such city and county have adopted a master plan as authorized by 19 O.S. § 863.1 *et seq.*, any deed which

1. conveys a tract of less than one entire platted lot, or
2. conveys an unplatted tract described by federal survey or metes and bounds, ~~consisting of two and one-half acres or less, if filed before April 8, 1992, or~~ consisting of five acres or less, ~~if filed after April 7, 1992,~~ or

3. on or after November 1, 2006, conveys an unplatted tract, regardless of the size of such tract, which conveyance results in a "remainder tract" of five acres or less,

shall not be considered valid unless

a. the deed bears a certificate of approval for lot split purposes by the cognizant planning agency, or

b. the legal description contained in the deed was previously approved by the cognizant planning agency and endorsed upon the first deed of record creating such lot split, or upon a certified copy thereof, or

c. the legal description contained in the deed was the subject of a prior deed, which prior deed was filed for record before June 10, 1963, or

d. the tract is situated within a municipality in such county which had not adopted a master plan at the time the first deed creating the lot split was filed for record, or

e. the deed has been of record for at least five years, or

f. the legal description contained in the deed constitutes a "remainder tract" consisting of the balance of (i) a platted lot, or (ii) an unplatted tract previously

held under common ownership with the original severed portion of such unplatted tract as hereinafter described, and

1. a deed appearing of record describing the original severed portion of such lot or tract either

a. bears a certificate of approval for lot split purposes by the cognizant planning agency or

b. has been of record for at least five years

2. the original severed portion of such lot or tract was taken or created in fee by dedication, conveyance or condemnation as a public way.

Authority: 19 O.S. § 863.1 *et seq.*, see § 863.10; 16 O.S. § 27a.

Comment: Subparagraph f(2) must be disregarded if the examiner has reason to believe a dedication or conveyance as a public way has not been accepted by the grantee.

APPENDICES

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

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

OBA REAL PROPERTY LAW SECTION
TITLE EXAMINATION STANDARDS COMMITTEE

2006 TES Committee Meeting Schedule

January 20, 2006 - Tulsa

February 17, 2006 - Stroud

March 17, 2006 – OKC

April 21, 2006 - Stroud

May 19, 2006 - Tulsa

June 16, 2006 - Stroud

July 21, 2006 - OKC

August 18, 2006 - Stroud

September 15, 2006 - Tulsa

APPENDIX 2
LATEST T.E.S. COMMITTEE AGENDA

2007 AGENDA
(As of January 12, 2007)

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

Sub-Comm.	Std.	Status	Description

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

_____*JAN 20/TULSA*_____

Orlowksi ???	29.2	Jan Report	PROTECTION AFFORDED BY THE ACT (SLTA: FOR TAX DEEDS) **The question was raised as to (a) whether the protection of the act is effective to validate Tax Deeds (to avoid a quiet title suit after 10 years), and (b) whether the 10-year period is measured from the filing of the tax deed or from the filing of the deed from the tax deed holder.** [raised by Monica Wittrock]
McEachin ???	24.12	Jan Report	MORTGAGES TO NOMINEES/AGENTS (MERS: FORECLOSURE PARTIES) **The question was raised as to whom are the appropriate parties to a foreclosure involving a MERS mortgage.** [raised by OLTA Board]
Wimbish ???	25.5 and 25.6	Jan Report	OKLAHOMA ESTATE TAX LIEN and OKLAHOMA TAX WARRANTS (IMPACT OF NEW STATUTE) **The question was raised as to whether the existing title standards need to be revised due to the enactment of revisions to the OTC statutes.** [raised by Kim Ashley]
Rheinberger ???	13.8	Jan Report	RECITAL OF IDENTITY, SUCCESSORSHIP OR CONSOLIDATION **The question was raised as to: "Title standard 12.4 lets you disregard 18 O.S.1144 on recording cert. of**

			merger, etc. Title standard 13.8 requires recording under 54 O.S. 1-907(d) after 11-1-97. The only difference in statutes are Sec. 1144 say '…shall be filed…'. Sec. 1-907 say '…upon recording...' . What is the difference? I believe the last two sentences of Standard 13.8 should be deleted. Remember these are Title Standards not transactional standards." [raised by Henry Rheinberger]

Astle ???	15.4	Jan Report	ESTATE TAX CONCERNS OF REVOCABLE TRUSTS **The question was raised as to what happens when (a) title is held in a revocable trust and the sole settler dies with all assets, pursuant to the terms of the trust, flowing to the benefit of the surviving spouse, with the result that no estate taxes are due, but what if (b) the surviving spouse trust beneficiary (who is not a settler of the trust) dies while title remains of record in the trust. The concern is whether there is a taxable event via the second death while title is vested in the trust.** [raised by Dale Astle]

(Epperson) ???	New	Jan Report	MARSHAL/COMMISSONERS FEDERAL SALES **The question was raised as to what the title examiner should require to support a marshal/commissioner's federal sale (see Rules 201 and 202, and 69).** [raised by several people including Jerry Risling]

(Epperson) ???	12.2	Jan Report	REBUTTABLE PRESUMPTIONS CONCERNING CORPORATE INSTRUMENTS EXECUTED IN PROPER FORM ("ASSISTANT" VICE PRESIDENT) **The question was raised as to whether an "assistant" vice president is presumed to have authority to execute corporate real property documents..** [raised by OLTA Board]

(Epperson) ???	15.2	Jan Report	TITLE TO TRUST HELD UNDER AN EXPRESS PRIVATE TRUST (TRUST AS PRIOR GRANTOR WITHOUT FILING A MEMORANDUM) **The question was raised as to whether to pass title where the title has been held in the name of the trust (not in the name of the trustee) and, although no "memorandum of trust" was ever filed, the title was subsequently conveyed by a purported trustee. This determination is being conducted several transactions**

			later. [raised by OLTA Board]

(Epperson) ???	???	Jan Report	UNKNOWN SUCCESSORS The question was raised as to whether it is necessary when determining heirs and quieting title under title 84 O.S. 257 and 12 O.S. 2004(c)(3)(b)(2) to name both the unknown successors and the unknown heirs. [raised by Kraettli Epperson]

Epperson	NEW	Jan Report	UNIFORM ELECTRONIC TRANSACTIONS ACT *Tulsa County has been filing scanned documents for several years, and Oklahoma County is currently filing scanned copies. A new uniform act relating to electronic recording of real estate documents is being drafted to be introduced in the 2007 session.*

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==========

==========DORMANT==========

COMMITTEE OFFICERS:

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(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2006\Agenda2007jan)

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)

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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)

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

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

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

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

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

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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.EppersonLaw.com**)**

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER

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ANNUAL HANDBOOK

(Effective July 31, 2006)

STATUS REPORT

State		Last Revised		Standards		
		Pre-2001	2001+	#Ch.	#Stands.	#Pgs.
1.	Arkansas	12-20-00	-	22	110	65
2.	Colorado	-	05-13-06	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	-	10-00-05	15	99	75
9.	Kansas	-	02-01-99	23	71	122
10.	Louisiana	-	00-00-01	25	233	99
11.	Maine	-	02-14-06	09	71	98
12.	Massachusetts	-	11-14-04	NA	69	99
13.	Michigan	-	05-00-04	28	252	442
14.	Minnesota	-	06-17-05	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	-	12-00-05	18	190	227
22.	Ohio	-	11-07-03	NA	53	44
23.	Oklahoma	-	11-04-05	35	116	108
24.	Rhode Island	-	07-00-03	14	72	72
25.	South Dakota	-	06-21-03	NA	66	58
26.	Texas	-	06-24-05	15	77	65
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.

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

2006 Title Examination Standards Committee

Kraettli Q. Epperson, Oklahoma City, *Chair*
Scott McEachin, Tulsa, *Secretary*

Dale L. Astle, Tulsa

Rickey Avery, Oklahoma City

Barbara L. Carson, Tulsa

William Doyle, Tulsa

Alan C. Durbin, Oklahoma City

Kraettli Q. Epperson, Oklahoma City

Larry Evans, Tulsa

James Folsom, Broken Arrow

Toney Foster, Tulsa

Martha M. Hardwick, Tulsa

John J. Mackey, Jr., Norman

Randolph Marsh, Ardmore

John L. Myles, Oklahoma City

Daniel Ogunbase, Oklahoma City

D. Faith Orlowski, Tulsa

O. Saul Reid, Oklahoma City

Henry P. Rheinburger, Oklahoma City

Jack Sargent, Oklahoma City

Michael Shanbour, Edmond

John B. Wimbish, Tulsa

2003 Real Property Law Section Board of Directors & Committee Officers