AUTHORITY FOR AND USE OF TITLE EXAMINATION STANDARDS: STATUTES, CASES, OKLAHOMA ABSTRACTOR'S BOARD REGULATIONS, & TITLE EXAMINATION STANDARDS: REVISIONS FOR 2006-2007

(Covering July 1, 2006 to June 30, 2007; Plus TES adopted Nov. 2007)

BY:

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For:
Oklahoma Bar Association

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State Univ. of N.Y. at Stony Brook [M.S. (Urban and Policy Sciences) 1974]; &
Oklahoma City University [J.D. (Law) 1978].

PRACTICE: Real Property Litigation (Quiet Title, Condemnations, & Restrictions);
Condo/HOA Creation & Representation; and
Real Estate Acquisition & Development.

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);
OKC Real Property Lawyers Assn. (current member, former President); and
BSA: Vice Chair & Chair, Baden-Powell District, Last Frontier Council (2000-2007);
former Cubmaster, Pack 5, & Assist. Scoutmaster, Troop 193, All Souls Episcopal Ch.

SPECIAL EXPERIENCE:

Court-appointed Receiver for 5 Abstract Companies in Oklahoma
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 - 2003);
Chairman: OBA/OLTA Uniform Abstract Certif. Committee (1982);
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)*; 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;*

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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, arising over the 12 months preceding June 30, 2007, including any (1) statutes enacted during the most recent State legislative session, (2) approved and proposed abstractor's regulations from the Oklahoma Abstractor's Board, (3) cases from the Oklahoma Supreme Court or the Court of Appeals, and (4) Oklahoma Title Examination Standards adopted in November 2007 and being considered in 2008.

II. STATUTORY CHANGES

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

A. FENCELINE SURVEYS AND AGREEMENTS, AND ATTORNEY FEES

(HB 1284: Sherrer and Martin (Steve) of the house and Burrage of the Senate; Effective: November 1, 2007—new law: 4 O.S. Section 150.1):

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.1 of Title 4, unless there is created a duplication in numbering, reads as follows:

A. If a survey obtained by a property owner reflects a property line across an existing boundary or division line fence, said property owner shall not damage or remove the existing fence or authorize the establishment, locating or relocating of any improvements, including utility installation on such property, until the adjacent property owner has been given notice. The notice shall include a copy of the survey, the nature of the relief requested, and notice that the court may award attorney fees and costs to the prevailing party if an action to establish title is filed by the requestor against the recipient. The notice shall be served in the same manner as provided for service of process in Section 2004 of Title 12 of the Oklahoma Statutes.

B. If no agreement has been reached by the adjoining property owners within thirty (30) days from receipt of the notice sent pursuant to subsection A of this section, the property owner may cause an action to be filed against the adjacent property owner in the district court in the county where the property is located to establish title to the parcel of property at issue. The district court shall enter such temporary relief as may be necessary to maintain the status quo during the pendancy of the action.

C. The prevailing party shall be entitled to an award of attorney fees and costs.

SECTION 2. This act shall become effective November 1, 2007.

B. ABSTRACTOR'S BOARD

(SB 909: Crain and Sykes of the Senate and Blackwell, Roan, Coody, Martin (Steve) and Sears of the House; certain sections are Effective: July 1, 2007, and others are Effective January 1, 2008—amending existing law (74 O.S. Sections 227.10, 227.11, 227.12, 227.13, 227.14, 227.15, 227.17, 227.18, 227.20, 227.21, 227.22, 227.23, 227.25, 227.26, 227.27, and 227.28, and

creating new law (1 O.S. Sections 22, 23, and 26, and recodifying many sections from Title 74 into Title 1):

1. A 9-person Abstractors Board is established to take over the regulatory responsibilities of the State Auditor and Inspector, as of January 1, 2008;
2. The 9-person Board is composed of 6 abstractors, 1 licensed real estate broker, 1 attorney, and 1 officer of a bank;
3. The Board members are appointed by the Governor and take office effective January 1, 2008, to serve 4-years terms with staggered terms for the initial employees;
4. The Board can hire staff; and
5. The annual certificate of authority fee is increased.

C. PENDING LEGISLATION (PREP REPORT)

This is an update on the bills we tracked for PREP. Several bills have been signed by the governor. If anyone needs me to e-mail them a copy, please let me know. Other bills reflect they are going to conference committee to iron out differences between the House and Senate versions of the bill. They will then need to be voted on by both the House and Senate before going to the governor for signature. There are still other bills that show being dormant pursuant to rules and some being dead. I am not removing these from our list at this time because miracles do happen and someone can breath new life into the bill.

We hope this information is helpful. Please let me know if there are other bills you would like us to track for you.

Thanks,

Mark W. Mishoe, Chief Deputy
for Carolynn Caudill
405-713-7150

THE JOURNAL RECORD
LEGISLATIVE REPORT

Oklahoma County Clerk's Office
Bill Status Report
05-02-2008 - 14:46:39

- *Indicates action since request date.*

Referred to Committee
Reported from Committee
Passed 1st Chamber
Referred to Committee
Reported from Committee
Passed 2nd Chamber
Signed/Vetoed

Track: Oklahoma County

HB 1453	Johnson, Rob Garrison	Relates to counties and county officers; creates Preservation and Accessibility of County Records Act; EMERGENCY.
	Remarks:	This bill creates a Task Force to study and make recommendations for digitizing County Clerk records in Oklahoma, making them accessible on the Internet, and establishing fees.
	Track Name(s):	Oklahoma County
	Bill History:	05-01-08 H House referred to GCCA
HB 2580	Hyman	Relates to counties & information necessary for indexing by

	Ballenger	county clerks; requires certain information for legal descriptions.
	Remarks:	This is a County Clerk Association Bill which defines a properties "specific" legal description and may be described as "lot and block or quarter section". Their intent is to eliminate filings that cover whole sections when the filer is uncertain about the specific legal description. We are not sure how this will work in practice.
	Track Name(s):	Oklahoma County
	Bill History:	04-28-08 H House referred to GCCA
HB 2587	Braddock Lerblance	Relates to conveyances; creates Uniform Real Property Electronic Recording Act; authorizes & validates electronic documents; grants county clerk certain powers relating to recording documents; requires Archives & Records to adopt standards.
	Remarks:	This is model legislation from the National Conference of Commissioners on State Laws (NCCUSL)for the Uniform Real Property Electronic Recording Act.
	Track Name(s):	(Master List Only), Oklahoma County
	Bill History:	04-28-08 H House referred to GCCA
HB 2639	Peters Crain	Relates to probate procedure; creates the Non-Testamentary Transfer of Property Act.
	Track Name(s):	Oklahoma County
	Bill History:	04-28-08 G Signed by the Governor (Chap: 1)
HB 2726	Winchester Burrage	Relates to probate procedure & creditor claims against estates; modifies effect of failure to mail certain notice; provides certain notice; providing when certain time period for limitation of actions begins.
	Track Name(s):	Oklahoma County
	Bill History:	04-30-08 H House appointed Winchester, Sulivan, Braddock, McDaniel (Randy), Carey, & Duncan as conferees
SB 1575	Jolley Worthen	Relates to abstracting & the Oklahoma Abstractors Law; modifies requirement relating to certain required set of abstract books or indexes.
	Remarks:	This bill defines records needed for an "abstract plant" as all documents affecting title to real property which are filed, recorded "and currently available for reproduction." The title has been stricken from this bill.

	Track Name(s):	Oklahoma County
	Bill History:	04-29-08 G Signed by the Governor (Chap: 0)
SB 1705	Sweeden	Relates to counties, county officers, & the chairman of the board of county commissioners; makes language gender neutral.
	Remarks:	Shell
	Track Name(s):	Oklahoma County
	Bill History:	02-26-08 S Dormant pursuant to the rules
SB 1770	Lerblance Banz	Relates to revenue and taxation and delinquent property taxes by modifying procedures relating to county treasurer sale of certain property; modifies requirements for certain notice of sale of property; permits deposit of fees.
	Remarks:	County Treasurer's CGLC bill doing away with October lien sale. Amendments relate to additional repealers concerning the October Sale and includes an Emergency Clause upon passage.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 G Signed by the Governor (Chap: 0)
SB 1825	Ivester Braddock	Relates to property by creating the Oklahoma Uniform Trust Code; authorizes court intervention in certain circumstances; establishes certain requirements for spendthrift provision.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 H Died pursuant to the rules
SB 1893	Ballenger Liebmann	Relates to powers and duties of the Department of Environmental Quality by restricting local government ability to modify standards for solid waste disposal sites; EMERGENCY.
	Remarks:	Counties may adopt standards for the location, design, construction, and maintenance of solid waste disposal sites.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 H Died pursuant to the rules
SB 1953	Mazzei Terrill	Relates to revenue and taxation and the ad valorem tax; consolidates duplicate sections; EMERGENCY.
	Remarks:	CGLC Supports. When improvements are divided by taxing jurisdiction line they are valued in taxing jurisdiction where physical majority is located. The title was stricken from the bill. CGLC says to watch - there is a rumor this bill may

		change to something else.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 H Died pursuant to the rules
SB 1975	Corn Brannon	Relates to abstracting; makes language gender neutral; makes certain access to instruments of record for certain purpose only; prohibits selling of records for certain pupose.
	Remarks:	This bill has been amended and would prohibit any company holding a permit to build an abstract plant from selling copies of instruments of record from the County Clerk's Office for profit to the public over the Internet or other such forum. This does not affect abstract companies already in existence.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 G Signed by the Governor (Chap: 0)
SB 2150	Corn Brannon	Relates to fees; relates to county clerks by authorizing fees for electronic copies.
	Remarks:	We do not know who is behind this bill. This establishes a fee for furnishing "electronic" copies of records at $1.00 per page. The title was stricken from this bill.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 H Died pursuant to the rules

- End of Report

III. APPROVED ABSTRACTOR'S REGULATIONS FROM THE OKLAHOMA ABSTRACTOR'S BOARD

Abstractors Board
General Provisions Emergency Rules
CHAPTER 10. SUBCHAPTER 1

[Approved by Governor: February 19, 2008]

CHAPTER 10. ADMINISTRATION OF ABSTRACTORS LAW

SUBCHAPTER 1. GENERAL PROVISIONS

5:10-1-1. Purpose
The rules of this chapter have been adopted for the purpose of implementing the Oklahoma Abstractors Act, Title 1, of the Oklahoma Statutes. These rules have been promulgated in order to establish criteria, fees, and procedures for the granting of certificates, permits, and licenses.

5:10-1-2. Definitions
The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Abstractor**" means the holder of a certificate of authority, temporary certificate of authority, permit, or abstract license.

"**Act**" means the Oklahoma Abstractors Act.

"**Board**" means the Oklahoma Abstractors Board.

"**Licensee**" means a person who holds a current abstract license.

5:10-1-3. Authority, interpretation, and severability of rules
The rules in this Chapter are adopted pursuant to the provisions the Oklahoma Abstractors Act, Title l of the Oklahoma Statutes, and the Administrative Procedures Act. Should a court having jurisdiction or the Attorney General of Oklahoma find any part of the rules of this Chapter to be inconsistent with the provisions of law as they presently exist or are hereafter amended, they shall be interpreted to comply with the statutes as they presently exist or are hereafter amended and the partial or total invalidity of any section or sections of this Chapter shall not affect the valid sections.

SUBCHAPTER 3. ABSTRACT LICENSES, CERTIFICATES OF AUTHORITY, AND PERMITS

5:10-3-1. Who must hold abstract license

(a) A holder of a certificate of authority or permit who is an individual or partner actively engaged in the process of preparing abstracts, shall also be required to have an individual abstract license.

(b) Any person employed by a holder of a certificate of authority or permit for the purpose of searching county records for compiling abstracts shall hold an abstract license. An employee whose sole function is to put the work product of others into typewritten or other readable form shall not be required to hold an abstract license.

(c) For all or any part of calendar year 2008 and for the following calendar years each initial application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars ($150.00).

(d) For all or any part of calendar year 2008 and for the following calendar years each renewal application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars ($150.00).

5:10-3-2. Examinations for abstract license

(a) The test for an abstract license shall be given at least quarterly and at such other times as and at such locations as designated by the Board. The Board shall set the test dates for the calendar year at the first regular meeting of the Board of each calendar year.

(b) Tests shall be graded either pass or fail. Seventy per cent (70%) of the questions must be answered correctly to pass. If failed, the test can be taken again in thirty (30) days, not to exceed three times in a calendar year.

5:10-3-3. Bonds required for permits and certificates of authority

1) **County records bond**

(A) Each application for a certificate of authority shall be accompanied by a bond concerning county records only.

(B) Each application for a permit shall be accompanied by a bond concerning county records only.

(C) The bond shall be valid for one (1) year and extend coverage to the various county offices for damages by reason of mutilation, injury, or destruction of any record or records of the several county offices to which the applicant may have access.

(D) If a surety bond is provided it shall be issued by a surety company licensed to do business in the State of Oklahoma.

(E) The original bond shall be filed in the office of the Board. The Board or a person designated by the Board to perform such duties shall mail a certified copy of the bond to the County Clerk's office for filing.

(2) Errors and omissions bond or insurance

(A) Each application for a certificate of authority shall be accompanied by a bond or insurance to pay damages for possible errors in abstracts prepared by the holder of the certificate of authority

(B) If coverage for damages for possible errors in abstracts prepared by the holder of a certificate of authority will be by bond, then the bonds shall be on forms either prescribed by, or approved in advance by the Board.

(C) Upon compliance with the provisions of Section 27 of Title 1 of the Oklahoma Statutes and the rules set out in this Chapter the Board shall accept either a personal or surety bond by issuing a written statement of acceptance;

(D) A personal bond must provide that the certificate of authority or permit holder be the obligor and that the Board be the obligee. The personal bond, conditioned on the obligor performing its duties without error, must be accompanied by either cash or a Certificate of Deposit delivered to the Board.

(E) A Certificate of Deposit must be issued by a federally insured financial institution in the State of Oklahoma and must have a maturity term of a minimum of one year.

(I) The Certificate of Deposit shall on its face show either the Board as its holder or it shall be endorsed in favor of the Board.

(ii) The original Certificate of Deposit shall be delivered to the Board with an executed personal bond form.

(F) Interest on such Certificate of Deposit shall be paid to the obligor. Payment to a third party will be allowed on a personal bond upon presentation of either a final order of a District Court of the State of Oklahoma finding that the conditions of the bond have not been met, or upon written settlement with the obligor. Prior to payment unless the obligor presents to the Board either a surety bond or an alternative method of securing the personal bond equal to the amount of the claim against the bond the Board shall take action to suspend the certificate of authority of the obligor.

(G) The personal bond and a facsimile of the Certificate of Deposit become part of the file of the holder of the certificate of authority or permit for whom they are given. These documents are available for examination and copying by the public.

5:10-3-4. Application fees for Permits, Certificates of Authority, and Renewals

(a) For all or any part of calendar year 2008 and for the following calendar years a separate application and fee shall be submitted for each certificate of authority and permit, or renewal thereof, for each county in which the applicant desires to do business. The fee shall be as follows:

(1) County Population of less than 10,000	$ 400.00
(2) County Population of 10,000 but less than 30,000	$ 800.00
(3) County Population of 30,000 but less than 60,000	$1,200.00
(4) County Population of 60,000 but less than 100,000	$1,600.00
(5) County Population of 100,000 but less than 200,000	$2,400.00
(6) County Population of 200,000 or more	$3,200.00

5:10-3-5. Licensing associations, corporations, partnerships

An applicant for permit or certificate of authority issued to an association, partnership, corporation or other entity shall be required to comply with the same laws, rules, regulations, and orders as individuals. Such entities shall designate in writing an individual as service agent to receive service of summons and notice of hearings or state on the application form that it will accept service at its business address on the application form.

5:10-3-6. Transfer of Certificate of Authority

An applicant for a transfer of a certificate of authority by an individual, association, partnership, corporation, or other entity shall be required to comply with the same laws, rules, regulations, and orders applicable to the previous holder of the certificate of authority. The applicant shall also provide an affidavit as to due diligence efforts made to determined that the abstract plant acquired meets all the requirements of the Act.

5:10-3-7. Licensing nonresidents

(a) Anyone who is not a resident of the State of Oklahoma but who obtains a certificate of authority, permit or abstract license shall:

(1) give written consent that actions, suits at law and administrative proceedings may be commenced against such nonresident in any county in this state where any cause of action may arise or be claimed to have arisen out of any actions occurring as a result of alleged activities under the Act. Such consent shall be applicable to a nonresident, his agents or employees; and
(2) appoint, in writing, a service agent in the State of Oklahoma to receive service of summons or notice of hearing.

(b) A nonresident shall designate a service agent in accordance with provisions of Section 2004 of Title 12 of the Oklahoma Statutes.

5:10-3-8. Any application for renewal of a certificate or license received prior to the effective date of these rules shall be considered timely filed and the certificate or license for which renewal is being applied for shall continue in full force and effect until revoked or renewed by the Board.

5:10-3-9. Forms

(a) **Certificate of Authority**.

(1) The Board shall prescribe the initial application form for a certificate of authority to be used when an entity applies for a certificate of authority for the first time.

(2) The Board shall prescribe the form to be used for a temporary certificate of authority.

(3) The Board shall prescribe the renewal form to be used for the annual renewal of the certificate of authority.

(4) The Board shall prescribe the transfer form to be used when the ownership of holder of a certificate of authority changes.

(b) **Permit**.

(1) An application for a permit prescribed by the Board shall be used when an applicant desires to engage in the business of abstracting and does not hold a current certificate of authority in the appropriate county.

(2) When applying for a permit the applicant must include an affidavit on a form prescribed by the Board prepared by the appropriate District Court Clerk and County Clerk certifying the completeness or incompleteness of the county records.

(3) A general statement of the law, and instructions directing how the forms should be completed shall be included with each application for a permit.

(4) If the affidavits of the District Court Clerk or the County Clerk filed with the application for permit indicate that the records in either office are incomplete or if after an administrative hearing , it is determined that the records in those offices are incomplete~~,~~ then the applicant shall obtain all those records otherwise unavailable from the offices of the District Court Clerk and County Clerk prior to the issuance of the permit.

(5) The applicant for a permit shall provide the Board with proof that each person engaged in the search of county records for the purpose of establishing a plant is a holder of an abstract license.

(c) License. An application for an abstract license is used when an individual applies for an abstract license for the first time. A renewal form is used for the annual renewal of an abstract license.

(d) Renewal. An application for renewal shall be submitted on an application for renewal form prescribed by the Board with the appropriate fee.

(e) Bonds. A certificate of authority holder wishing to take advantage of the alternative pursuant to rule 5:10-3-3 of this Chapter, must use the Board bond form unless prior approval is received from the Board for the use of another form.

(f) Other forms. The Board shall provide such other forms as necessary to implement the provisions of the Act.

SUBCHAPTER 5. REGULATION OF LICENSEES, CERTIFICATE HOLDERS, AND PERMIT HOLDERS

5:10-5-1. Inspections

(a) The Board shall cause inspections of records and premises of all permit holders and certificate holders at the discretion of the Board.

(b) Upon request from the Board, a permit holder or certificate holder shall provide access to the records and premises of their business. Failure to do so in a timely manner shall constitute an offense subject to fine, suspension, revocation or such other sanction as may be determined by law.

(c) Certificate holders shall maintain for five (5) years a copy of the certificate page of such abstract, evidence of research, the certificate page of any abstract used for duplication, and billing information.

5:10-5-2. Penalties for failure to pay renewal fees

The Board shall assess and collect penalties against licensees and certificate holders for the failure to pay renewal fees. Such penalties shall be posted in the Board office. If the amount of the penalty is changed, thirty (30) days notice shall be given before the change shall be effective.

5:10-5-3. Preparation of abstracts

(a) **Type of Abstract**. A certificate of authority holder shall cause the preparation of an abstract which shall cover a fee simple estate, or upon the request of a customer, a fee simple estate less and except oil, gas, coal, and other mineral interests. The abstract certificate, caption sheet, or both shall reflect the nature of the abstract along with an appropriate disclaimer regarding that which is excluded.

(b) **Contents of Abstract**. For the time period covered by the certification, an abstract shall include the following:

(1) all instruments that have been filed for record or have been recorded in the Office of the County Clerk which legally impart constructive notice of matters affecting title to the subject property, any interest therein or encumbrances thereon;

(2) the records of the District Court Clerk and the County Clerk that disclose executions, court proceedings, pending suits, liens of any kind affecting the title to said real estate;

(3) judgments or transcripts of judgments against any of the parties appearing within the chain of title of the abstract, either indexed and docketed prior to October 1, 1978, on the judgment docket of the District Court Clerk or filed for record or recorded on or after October 1, 1978, in the Office of the County Clerk of said county; and

(4) all ad valorem tax liens due and unpaid against said real estate, tax sales thereof unredeemed, tax deeds, unpaid special assessments certified to the Office of the County Treasurer, due and unpaid, tax sales thereof unredeemed, and tax deeds given thereon and unpaid personal taxes which are a lien on said real estate.

(c) Federal Court Records. For property located in Muskogee, Okmulgee, Oklahoma, and Tulsa counties, for the time period covered by the certification, an abstract or special certificate shall include the records of the Clerk of the United States District Court and the records of the Clerk of the United States Bankruptcy Court in Muskogee Okmulgee, Oklahoma, and Tulsa counties, respectively, that disclose:

(1) executions, court proceedings, pending suits and bankruptcy proceedings in said courts affecting title to the subject property;

(2) judgments or transcripts of judgments against any of the parties appearing within the chain of title of the abstract, either indexed and docketed prior to October 1, 1978 on the judgment docket of the Clerk of the respective United States District Court or filed for record or recorded on or after October 1, 1978 in the office of the County Clerk of the respective county, affecting title to said real estate.

(d) **Other Services**. Any service performed by the holder of a certificate of authority that does not meet the standard established in the Act and the rules of the Board shall not be designated an "abstract" and shall not include an abstract certificate.

5:10-5-4. Minimum standards for preparation of abstracts.

(a) Copies of documents included in an abstract of title prepared by a holder of a Certificate of Authority shall be as legible as the source document on file in the offices of the County Clerk or the District Court Clerk except for source documents larger than 8 ½" x 14".

Abstractors Board
General Provisions Emergency Rules
[Approved by Governor: April 19, 2008]

TITLE 5. OKLAHOMA ABSTRACTORS BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1 – General Provisions [NEW]
5:1-1-1 through 5:1-1-3 [NEW]
Subchapter 3 – Administrative Operations [NEW]
5:1-3-1 through 5:1-3-6 [NEW]
AUTHORITY:
Title 1, Oklahoma Statutes, Section 22 *et seq.,* "Oklahoma Abstractors Act"
DATES:
Adoption:
March 6, 2008
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
None.
INCORPORATIONS BY REFERENCE:
None.
FINDING OF EMERGENCY:
Imminent peril exists to the preservation of the public health, safety, or welfare and a compelling public interest requires these emergency rules to be adopted, for the reason that these rules provide for procedures to be established to supplement and complete the Oklahoma Abstractors Act. Without such emergency rules, the Board cannot effectively and efficiently embark upon the regulation, licensure, and administration of those holders of Certificates of Authority, applicants for Permits and Licensees, including the filing of forms and complaints.
ANALYSIS:
The proposed rules provide for key definition of terms covered under the statute. It further sets forth the general administration of the office and the conduct of its daily business, including its physical address, mailing address, phone number, and business hours. These emergency rules are necessary to establish the office and its accessibility to the public.
CONTACT PERSON:
Monica Wittrock, Chairman (405) 232-3258

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. §253(D):

SUBCHAPTER 1. GENERAL PROVISIONS

5:1-1-1. Purpose

The Rules of this Title are provided for the purpose of interpreting and implementing the Oklahoma Abstractors Act, as set out in Title 1 of the Oklahoma Statutes, which established the Oklahoma Abstractors Board and conferred upon the Board the responsibility for administering and enforcing the Act.

5:1-1-2. Definitions

In addition to the terms defined in the Oklahoma Abstractors Act, the following defined words and terms shall be applied when implementing the Act and rules adopted by the Board.

5:1-1-3. Authority, interpretation, and severability of rules

The rules in this Chapter are adopted pursuant to the provisions of the Oklahoma Abstractors Act, Title l of the Oklahoma Statutes, and the Administrative Procedures Act. Should a court having jurisdiction or the Attorney General of Oklahoma find any part of the rules of this Chapter to be inconsistent with the provisions of law as they presently exist or are hereafter amended, they shall be interpreted to comply with the statutes as they presently exist or are hereafter amended and the partial or total invalidity of any section or sections of this Chapter shall not affect the valid sections.

SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

5:1-3-1. Powers and duties

The powers and duties of the Oklahoma Abstractors Board are set forth in the Oklahoma Abstractors Act, Title l of the Oklahoma Statutes.

5:1-3-2. Principal office; hours

The principal office of the Oklahoma Abstractors Board is 2401 Northwest 23rd Street, Suite 4, Oklahoma City, Oklahoma, 73107- 0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076. The office is open Monday through Friday from 8:00 A.M. until 5:00 P.M .except Saturday, Sunday and legal holidays.

5:1-3-3. Communications

All communication shall be in writing and addressed to the Board at the principal office of the Board unless the Board directs otherwise.

5:1-3-4. Availability of records; copies

Copies of rules, regulations, and other written statements of policy relating to abstract licenses, holders of a certificate of authority or permit, adopted by the Board in the discharge of duties and all final orders, decisions, and opinions will be available for public inspection at the principal office during stated office hours. Copies of the official records may be made and

certified by the Board or a person designated by the Board to perform such duties upon prepayment of the copying fee as authorized in the Oklahoma Open Records Act, which shall be posted in the office of the Board. All material in the office of the Board which is protected from publication by State and Federal law shall not be released.

5:1-3-5. Adoption, amendment or repeal of rule All interested persons may ask the Board to promulgate, amend, or repeal a rule. Such request shall be in writing and filed with the Board. The request shall fully set forth the reasons for its submission; the alleged need or necessity therefore; whether the proposal conflicts with any existing rule; and what statutory provisions, if any, are involved. Such request shall be considered by the Board. If the Board approves the proposed change, notice will be given that such proposal will be formally considered for adoption. If, however, the Board initially determines that the proposal or request is not a necessary rule, amendment, or repeal, the same will be refused and the decision reflected in the records of the Board. A copy will be sent to the person who submitted the request.

5:1-3-6. Declaratory rulings

Any person who may be directly affected by the existence or application of any of the public rules may request in writing an interpretation or ruling regarding the application of such rule to a particular set of facts. Any such request shall state sufficient facts and the particular rule to which those facts should be applied. The request will be reviewed by the Board. The Board will make a final determination of the interpretation or ruling and that interpretation of the rule will be furnished in writing within a reasonable time to the person making the request.

Abstractors Board
General Provisions Emergency Rules
[Approved by Governor: April 19, 2008]

TITLE 5. OKLAHOMA ABSTRACTORS BOARD
CHAPTER 20. COMPLAINTS AND ENFORCEMENT

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1 – General Provisions [NEW]
5:20-1-1 through 5:20-1-5 [NEW]
Subchapter 3 – Complaint Investigation Procedures [NEW]
5:20-3-1 through 5:20-3-2 [NEW]
Subchapter 5 – Formal Complaint Procedures [NEW]
5:20-5-1 through 5:30-5-9 [NEW]

AUTHORITY:

Title 1, Oklahoma Statutes, Section 22 *et seq.,* "Oklahoma Abstractors Act"

DATES:

Adoption:

March 6, 2008

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

None.

INCORPORATIONS BY REFERENCE:

None.

FINDING OF EMERGENCY:

Imminent peril exists to the preservation of the public health, safety, or welfare and a compelling public interest requires these emergency rules to be adopted, for the reason that these rules provide for procedures to be established to supplement and complete the Oklahoma Abstractors Act. Without such emergency rules, the Board cannot effectively and efficiently embark upon the regulation, licensure, and administration of those holders of Certificates of Authority, applicants for Permits and Licensees, including the filing of complaints, conducting investigations, and enforcing the Oklahoma Abstractors Act.

ANALYSIS:

The proposed rules provide for key definition of terms covered under the statute. It further sets forth the general procedures for the filing of a complaint, the investigation of a complaint, resolution of complaints, instituting a formal complaint, and the hearings process, including due process. These emergency rules are necessary to establish the procedures for the

public and other licensees to file a complaint, and the process for prosecution of same. These are necessary to establish the basic investigation, administrative hearing and resolution procedures.

CONTACT PERSON:

Monica Wittrock, Chairman (405) 232-3258

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. §253(D):

SUBCHAPTER 20. GENERAL PROVISIONS

5:20-1-1. Administrative Procedures Act

The procedure for complaints, notice, hearing procedures, and regulation of matters covered by the rules of this Chapter shall be governed by the Administrative Procedures Act, and any conflict between the provisions of this Chapter and the Act, the Act shall govern.

5:20-1-2. Filing complaints

(a) Any person having a complaint, which alleges violation or noncompliance with the Oklahoma Abstractors Act or the rules of the Board implementing that act, may address the complaint to the Board at its principle office.

(b) The complaint shall be in writing and signed by the complainant. It shall contain a clear and concise statement of the facts, including the names, addresses significant to the complaint, and sufficient information to reveal the alleged violations and the facts on which the alleged violations are based.

(c) When a complaint is the result of information contained in a published source, an original copy of the publication with date published and full name of the publishing entity shall be filed with the Board.

(d) In the event a complaint is received by an individual member of the Board or any member of the Board staff, the information shall be forwarded to the Board office for referral to the Enforcement Committee in accordance with the procedures adopted by the Board for processing other complaints received.

(e) The individual against whom the complaint has been filed shall be notified of the complaint under investigation and may file a response to the complaint within fifteen (15) business days of receipt of notice of the filing of the complaint.

(f) The Enforcement Committee shall provide a quarterly report to the Board regarding the status of each pending complaint.

(g) Any individual who has filed a complaint may request to be notified of the final disposition of the matter**.**

5:20-1-3. Investigators

(a) The Board may appoint one or more individuals to investigate complaints received alleging violations of the Act or the rules of the Board.

(b) An individual appointed as an investigator may be a volunteer who serves without pay or an individual hired to conduct the investigation. Any individual serving as an investigator shall serve at the pleasure of the Board.

(1) Individuals who are holders of a certificate of authority, abstract license, or permit shall be eligible to serve as Investigators. Any such individual shall provide sufficient information to the Board to assure no conflict of interest exists in the conduct of an investigation the individual is conducting.

(2) Other individuals may be appointed as investigators subject to review of their qualifications as they may be significant to the particular type of investigation being conducted.

5:20-1-4. Special prosecutors

(a) The Board may appoint a special prosecutor to work with the Enforcement Committee on each complaint under investigation.

(b) The Board may utilize lawyers licensed to practice law in Oklahoma to serve as special prosecutors in formal proceedings before the Board.

(c) An individual serving as special prosecutor shall not serve as legal counsel to the Board in the same formal proceeding.

5:20-1-5. Cost of investigations

(a) Investigators and Special Prosecutors may be compensated at a rate established by the Board on a case by case basis.

(b) Investigators and Special Prosecutors may be reimbursed for expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

SUBCHAPTER 3. COMPLAINT INVESTIGATION PROCEDURES

5:20-3-1. Enforcement committee procedures

(a) All complaints received by the Board, shall be referred to the Board Enforcement Committee for recommendation for action.

(b) The Enforcement Committee shall be comprised of at least two (2) members of the Board appointed by the Chairman. In the absence of the Chairman of the Board appointing a Chairman of the Enforcement Committee, the members of the Enforcement Committee shall choose their Chairman.

(c) Upon receipt of the complaint and information pertaining to the complaint, the Enforcement Committee may make appropriate inquiry to verify the information received.

(d) The Board may obtain a criminal record check of any applicant from the Oklahoma State Bureau of Investigation or other law enforcement sources.

(e) Upon completion of the preliminary inquiry, the Enforcement Committee shall take one (1) or more of the following actions:

(1) Recommend to the Board that the investigation should be terminated because it appears:

(A) there has been no violation of the law or rules, or

(B) there is insufficient evidence to support any allegation of a violation.

(2) Attempt an informal resolution of the allegations of violations contained in the information received.

(3) Require further investigation.

(4) Hold the file in abeyance pending receipt of information as a product of an investigation or hearing by another state or federal agency.
(5) Recommend a specific action by the Board.

5:20-3-2. Responsibility of investigators

(a) Upon referral from the Enforcement Committee, an investigator shall determine whether there exists sufficient cause to believe that misconduct has occurred which justifies the institution of formal proceedings. Such determination shall be presented to the Enforcement Committee in a report written and signed by the investigator.
(b) Such report shall contain a summary of the evidence, including any material provided by the accused, conclusions of fact, specific reference to applicable laws and rules, and recommendation with respect to institution of formal proceedings.
(c) All investigations shall be conducted in a timely manner.
(d) Upon conclusion of any investigation, the investigators shall promptly report the results to the Enforcement Committee.

SUBCHAPTER 5. FORMAL COMPLAINT PROCEDURES

5:20-5-1. Filing of formal complaint

(a) The Enforcement Committee and the special prosecutor shall determine if a formal complaint should be filed.
(b) In the event the Enforcement Committee and the special prosecutor do not agree on whether a formal complaint should be filed, the Chairman of the Enforcement Committee shall prepare a report for the Board. The Board shall make the final determination regarding further action.
(c) The formal complaint shall be signed by the special prosecutor or the Chairman of the Enforcement Committee. In the event the special prosecutor and the Enforcement Committee do not agree, the Chairman of the committee shall sign the formal complaint.
(d) The formal complaint shall include a concise statement of the allegations and particular sections of the Act or rules of the Board which are involved.

5:20-5-2. Violations by holders of a certificate of authority, abstract license, or permit

(a) In the event the investigation of an allegation against a holder of a certificate of authority, abstract license, or permit concludes that the individual against whom the complaint has been filed is in violation of the Act or the rules of the Board, the Board shall take any authorized action to protect the public from the unauthorized or illegal action of the certificate, license or permit holder.
(b) The Chairman of the Board shall set a time and place for the hearing of the formal complaint. Notice of the hearing shall be sent to the individual against whom the complaint has been filed not less than twenty (20) days from the date of the hearing at the last known address as shown in the official records of the Board.
(c) The person against whom the complaint has been filed shall be provided with any material information including any staff memoranda or data to be relied on by the Board.
(1) At the hearing, the person against whom the formal complaint has been filed shall be afforded an opportunity to contest the reports and other materials referenced.

(2) The experience, technical competence, and specialized knowledge of the members of the Board may be utilized in the evaluation of the evidence.

5:20-5-3. Formal complaint hearing procedures

(a) Hearings will be conducted by one of the following methods, determined by the Board before the hearing begins:

(1) By the Board;

(2) By any member of the Board or a designee of the Board acting as a hearing examiner or Administrative Law Judge; or

(3) By an attorney licensed to practice law in this state appointed by the Board to act as a hearing examiner or Administrative Law Judge.

(b) All oral proceedings shall be electronically recorded.

(1) The record shall be transcribed upon request of any party to the proceeding.

(2) All costs of such transcription shall be paid in advance by the requesting party.

(3) Upon approval of the Chairman of the Board, the accused, may use a licensed court reporter to transcribe the hearing. The cost of such reporter shall be paid by the accused.

(c) The hearing record of any formal proceeding shall be open to the public.

5:20-5-4. Standards for making decision

(a) The Board may take notice of:

(1) Judicially cognizable facts, and

(2) Generally recognized technical or scientific facts within the specialized knowledge of one or more members of the Board.

(b) The standard of proof in all hearings shall be clear and convincing evidence.

(c) The Board shall consider past disciplinary action taken against any accused found guilty in any present proceeding. Such past conduct shall not be evidence of guilt in the present proceeding but will be considered only in determining appropriate sanctions to be imposed by the Board in the present proceeding.

(d) Unless precluded by law, the accused may waive any right granted in the law and proceed by stipulation, agreed settlement, consent order, or default. No provision of this section shall be construed as prohibiting the Board from suspending, or holding in abeyance, any formal proceeding pending the outcome of informal negotiation or informally agreed upon terms.

(e) All orders shall be in writing and state findings of fact, conclusions of law, and actions to be taken. Final orders shall state their effective date.

5:20-5-5. Subpoena of witness, documents, or things

(a) In all cases the Board may issue subpoena or subpoena *duces tecum* where a party desires to compel the attendance of witnesses after a complaint has been filed.

(b) When the party, or his attorney, desires to have witnesses subpoenaed to appear before the hearing examiner, a request in writing shall be made by such party or his attorney, giving the name and correct address of any such witness.

(c) The requesting party shall pay the cost of service.

5:20-5-6. Discipline for violations by applicants

(a) An applicant for an abstract license who is alleged to have violated the Act, the rules of the Board, or who subverts or attempts to subvert the examination process shall be subject to disciplinary action by the Board.
(b) Failure of any applicant to cooperate with an investigation conducted by the Board shall result in denial of the application.
(c) Upon the determination that the applicant is guilty of the allegations, the Board may impose one (1) or more of the following disciplinary measures on the applicant:

(1) Withhold the grades on the examination;
(2) Declare the scores on the examination invalid;
(3) Disqualification the from holding a certificate of authority, or license permanently or for a specified period of time; or
(4) Impose other authorized penalties.

5:20-5-7. Violations by individuals who do not hold a certificate of authority, license or permit

(a) In the event the investigation of an allegation against an individual who is not a holder of a certificate or abstract license concludes that the accused is in violation of the Act or rules of the Board and that action should be taken to stop the violation, the Board may designate a member of the Board, staff member, or other individual acting for the Board to:

(1) Send written notice of the accusation, supporting documentation and a copy of the Complaint and Notice of Hearing, to be held not later than sixty (60) days following such notice, to the accused by certified mail, restricted delivery, return receipt requested. Notice may also be given by personal service upon the person of the accused in a manner authorized by the statutes of the State of Oklahoma for service of process in a civil proceeding;
(2) Provide the accused with a copy of the Act and rules of the Board along with its notification of the accusation and Complaint and Notice of Hearing.

(b) The Board, at a full and formal hearing, shall make a final determination of the accusations against the accused and issue such permanent cease and desist order, fine, penalty or other action as authorized by the Act and the rules of the Board.

5:20-5-8. Final orders

(a) A final order shall be in writing and shall include separate statements of the findings of fact and conclusions of law.
(b) Findings of fact shall be accompanied by a concise and explicit statement of the evidence supporting the findings. The order shall include a ruling on proposed findings of fact submitted by a party to the proceeding.
(c) A copy of the final order shall be delivered or mailed forthwith to each party or to their attorney of record as soon as practicable.

5:20-5-9. Rehearings

(a) An application for rehearing may be made in writing within ten (10) days of the date of the final order. The petitioner shall set forth one (1) or more of the following as grounds in the rehearing request:

(1) newly-discovered or newly-available evidence, relevant to the issues;
(2) need for additional evidence to adequately develop the facts essential to a proper decision;
(3) probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the order;
(4) need for further consideration of the issues and the evidence in the public interest; or
(5) showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(b) Nothing in this Subchapter shall prohibit the Board from rehearing, reopening or reconsidering a matter at any time, on the grounds of fraud practiced by the prevailing party, procurement of perjured testimony, or fictitious evidence, and in accordance with other statutory provisions applicable to the Board.

All interested persons may ask the Board to promulgate, amend, or repeal a rule. Such request shall be in writing and filed with the Board. The request shall fully set forth the reasons for its submission; the alleged need or necessity therefore; whether the proposal conflicts with any existing rule; and what statutory provisions, if any, are involved. Such request shall be considered by the Board. If the Board approves the proposed change, notice will be given that such proposal will be formally considered for adoption. If, however, the Board initially determines that the proposal or request is not a necessary rule, amendment, or repeal, the same will be refused and the decision reflected in the records of the Board. A copy will be sent to the person who submitted the request.

5:1-3-6. Declaratory rulings

Any person who may be directly affected by the existence or application of any of the public rules may request in writing an interpretation or ruling regarding the application of such rule to a particular set of facts. Any such request shall state sufficient facts and the particular rule to which those facts should be applied. The request will be reviewed by the Board. The Board will make a final determination of the interpretation or ruling and that interpretation of the rule will be furnished in writing within a reasonable time to the person making the request.

IV. CASE LAW CHANGES

1. **FEE SIMPLE DETERMINABLE:**

Ator v. Unknown Heirs, 2006 OK CIV APP 120 (decided 06/15/06; mandate issued 10/30/06): The Oklahoma Court of Civil Appeals affirmed the trial court which held that the language of a deed and a related agreement required the automatic termination of a conveyance of land to a public school district "*solely for the construction and maintenance of said real estate property of a football playing field and stadium for the use and benefit of the students of said School District, for so long as said real property shall be used for such purposed as a part of a regularly organized and fully scheduled program of football practices and playing…and provided further that if at any time after the date hereof , [School District] shall fail to comply with the terms of this deed or said agreement or observe the spirit thereof, this grant shall become null and void and the full fee simple to said property shall revert to and vest in [Thelma and M.D. Ator], their heirs and assigns forever."* The land had not been used for regular public school football games for several years, because a new stadium had been built. The court held that "substantial compliance" would not be the test (district used it for practice football purposes and allowed a private organization to play football games there), and that, unlike a conveyance of fee simple subject to a condition subsequent (granting a right of re-entry), this was determinable fee simple, which reverts to the grantor automatically. The Court rejected a laches challenge to the quiet title action, using a 15-year time frame along with a requirement for detrimental reliance. A portion of the land which had been conveyed by the District to a City that constructed a roadway was left with the City,

although the grantor's heir was entitled to compensation through inverse condemnation.

2. EXONERATION OF SURETY:

First Enterprise Bank v. Be-Graphic, Inc., 2006 OK CIV APP 141 (decided 06/16/2006; mandate issued 11/09/2006): Upon mortgage foreclosure, a spouse challenged a mortgage debt for which she was allegedly liable as a surety. The trial Court held and the Oklahoma Court of Civil Appeals affirmed that substantial modifications to the debt were made without her consent, and that a limited waiver by her as to certain specific types of defenses was not broad enough to cover all possible modifications to the obligation. The wife was exonerated from any obligation.

3. INADEQUATE SERVICE:

Mortgage Electric Registration Systems, Inc. v. Crutchfield, 2006 OK CIV APP 95 (decided 07/20/2006; mandate issued 08/24/2006): A New York resident was sued in Oklahoma district court for the *in rem* foreclosure of residential mortgage. The green card for the service of the Petition was signed and returned, and a default judgment taken. The defendant filed a Petition to Vacate the default judgment, because (a) it was not served on his residence (but on a commercial mail box), and (b) he did not sign it, and (c) it was not signed by an authorized agent. The trial court held that because the defendant included a non-jurisdictional ground in his Petition (fraud in the procurement), that he had entered a general, rather than a special limited appearance. Consequently, the trial court denied the attempted vacation, leaving the judgment intact. Upon appeal, the Oklahoma Court of Civil Appeals reversed and held the trial court did not have jurisdiction and further held that the current law does not punish someone for joining such non-jurisdiction claim for relief with a challenge to personal jurisdiction. Questions

raised by the defendant concerning (a) the homestead nature of the house, and (b) whether "MERS, acting in its individual capacity, does not have standing to sue," due to its failure to register with the Oklahoma Secretary of State, are to be decided by the trial court.

4. FAILURE TO RELEASE MORTAGE:

Thaxton v. Beneficial Mortgage Co. of Oklahoma, 2006 OKCIV APP 101 (decided 08/01/2006; mandate issued 08/24/2006): The statutes (46 Section 15) require a lender to file a release of a paid off mortgage within 50 days. The statute provides that upon failure to file such release, within such 50-day time period, and upon passage of an additional 10-days after a demand for such release, the lender is strictly liable for a penalty of 1% of the face amount of the original mortgage, up to $100.00 per day. A lender failed to file the releases for two mortgages which were admittedly paid off. Upon multiple occasions when the borrower was seeking to secure a loan on his house and later to refinance such later mortgage, the first lender reassured the borrower that the releases would be forthcoming. When upon one such occasion, the borrower was unable to secure refinancing due to such unreleased mortgages, the borrower went into default and the later lender refused to accept a deed in lieu of foreclosure due to such unreleased earlier mortgages. The borrower sued the first lender to recover both statutory damages and additional damages for the infliction of emotional distress. The trial court granted a summary judgment in favor of the lender. The lender advanced 4 arguments, of which the appellate court remanded as to one, accepted one, and denied two. The appellate court held first, in regard to the lender's assertion that the one-year statute of limitation on a borrower's right to file an action to recover such penalty had passed, that the matter

had to be remanded for the trial court to determine whether the doctrine of equitable estoppel prevented the lender, which repeatedly gave unfulfilled assurances that the releases would be promptly forthcoming, from relying on such limitation. The appellate court rejected the two arguments claiming (a) that the abstract company was not the borrower's agent and (b) that the second of the two mortgages was not in fact paid off. As to the ability of the borrower to seek recovery beyond the statutory damages, the appellate court agreed with such bar.

5. FORECLOSURE DURING TAX SALE:

Clark v. Fragomeni, 2006 OK CIV APP 111 (decided 08/08/2006; mandate issued 09/14/2006): After the issuance of a tax certificate due to the failure of the land owner to pay ad valorem taxes, a mortgage foreclosure action was initiated and a *lis pendens* notice of the foreclosure was filed of record. Once the required 2-year redemption period passed, without redemption from the taxes, a notice of application for the Certificate Tax Deed was given to the former land owner, but not to the lender or the purchaser at the sheriff's sale under the mortgage foreclosure. When the buyer under the sheriff's deed sought to quiet title, the trial court granted the tax deed holder judgment. Upon appeal, the court affirmed such trial court decision but modified it to the extent that such title in the tax deed holder was subject to the mortgage which mortgage interest had been purchased by the sheriff's deed holder. A separate finding of adverse possession in favor of the tax deed holder by the trial court was overturned on appeal as being contrary to the record.

6. EMINENT DOMAIN PROCEDURES:

Public Service Company of Oklahoma v. Willis, (approved for publication by order

of the Supreme Court), 2007 OK CIV APP 18 (decided 09/19/2006; mandate issued 02/16/2007): A landowner challenged the right of a utility, Public Service of Oklahoma, to use condemnation to take a easement over his land to build a spur railroad line to serve its own facility. The trial court denied the landowner's claims, and, after a successful state court appeal by the landowner which resulted in a trial as to the adequacy of the public purpose, the trial court again sustained the taking. The landowner initiated another appeal which was denied on all points by the Oklahoma Court of Civil Appeals. The arguments that were rejected included: (1) PSO was a trespasser from the time it paid the Commissioners' award into court and promptly took possession of the land, until the second trial court order was issued finding there was a public purpose, (2) the trial court was without jurisdiction because PSO was regulated, in its construction of a railroad, by the federal Surface Transportation Board, (3) PSO was guilty of fraud and abuse and oppression, and (4) the Commissioners were improperly selected and the value was improperly determined and any improvements built during the first appeal belonged to the landowner. The case provides, under the headings: "Standard of Review" and "Discussion", a concise summary of the rules for determining whether the right of eminent domain was properly exercised.

7. RATABLE SURETY MORTGAGES:

Bank of the Wichitas v. Ledford, 2006 OK 73 (decided 10/10/2006; mandate issued _____): There were three mortgages given, the first two from a parent to secure a debt of a child (Tommie), with the two mortgages ultimately determined to be "surety mortgages" (i.e., to secure the debt of a third person). The two mortgages were signed by the three children of the parent (including Tommie) using a durable power of attorney

from the parent Then after the parent died and the subject mortgaged property was devised in three separate parcels to the three children, including Tommie, Tommie gave another note to the same bank and mortgaged his separate parcel. Upon default by Tommie on both notes, and after the two other siblings paid off the first note, being substituted by subrogated into the lenders' position as to the first note and the related first two mortgages, the two other siblings attempted to foreclose and to satisfy the assigned first note and first two mortgages by selling Tommie's sole parcel leaving their own lands unaffected. The trial court granted summary judgment allowing the other two siblings to follow this procedure, and, due to the value of Tommie's separate parcel being insufficient to satisfy both the first and second notes, the lender was left with no collateral and no proceeds to apply on its second note debt. On appeal by the lender, Justice Opala wrote that the two siblings did not have to marshal assets combining their own land into the available collateral to satisfy the two debts, because there were not two separate funds, because the other two siblings' interests in their own land (not Tommie's), acquired by devise, merged into that portion of the mortgage interest acquired from the lender, as to their own tracts. In other words, you cannot foreclose on yourself. However, the Supreme Court remanded the matter to the trial court to determine what prorata portion of the first debt (Tommie's debt) was greater than the two siblings' share of the debt, with such excess payment by the co-sureties being satisfied from Tommie's sole parcel, with any remaining funds from the sale of Tommie's separate parcel being available to the lender to apply towards the lender's second note, which was secured solely by Tommie's parcel. [If anyone has a different understanding of this complicated case, please contact this author.]

8. STREAM WATER ALLOCATION:

Heldermon v. Wright, 2006 OK 86 (decided 11/21/2006; mandate issued _____): A trial court held that an upstream riparian land owner – who was building a dam to detain water to be used for recreational purposes -- must release a specified amount of water regularly to the downstream side. The Court of Civil Appeals held that the 1993 amendments to the Oklahoma Stream Water Use Law, which attempted to overcome constitutional infirmities identified in an earlier Supreme Court case, did not remedy the unconstitutional defects in the law, but affirmed the trial court on other grounds. On Cert. the Supreme Court remanded the case to the trial court on procedural grounds, concluding that there was no evidence that the Oklahoma Water Resources Board was given notice of the suit, so that the Attorney General could be instructed to intervene in the case to protect the public interest.

9. AD VALOREM VALUATION INCREASE:

Matthews v. Funck, 2007 OK CIV APP 15 (decided 01/09/2007; mandate issued 02/09/2007): The Court of Civil Appeals affirmed the trial court's determination in a summary judgment that a senior citizen could freeze the value of his homestead but only as of January 1 of the next year after he acquired the land. Therefore, the 5% per year limitation on the permissible increase in the assessment for tax purposes, was pre-empted by the "revaluation on transfer" provision of the statutes. Hence, the valuation at which the land was frozen was the fully increased value (up to true market value), without application of the 5% per year limitation rule.

10. SURFACE DAMAGES VALUATION:

Chesapeake Operating, Inc. v. Loomis, 2007 OK CIV APP 55 (decided 03/05/2007; mandate issued 06/01/2007): The trial court's determination that a majority report by 2 of 3 appraisers was allowed and was the appropriate measure of surface damages was affirmed by the Court of Civil Appeals. Chesapeake's appraiser -- the third and dissenting appraiser – produced a lower value which did not include several items of damage considered by the majority, including Chesapeake's use of off-site lands for parking, damages for a water spill off-site causing erosion problems, and diminution in value of the off-site tract due to the "stigma" of having an oil and gas operation on an adjacent tract.

11. CONDOMINIUM ASSOCIATION RIGHT TO CONDEMNATION PROCEEDS:

City of Tulsa v. Raintree Estates I, Inc. v. Raintree Estates I, Inc., 2007 OK CIV APP 41 (decided 01/23/2007; mandate issued 05/25/2007): A trial court enjoined the condominium home owners association board from making a special assessment against the members who had directly received all of the compensation from a condemnation of a portion of the common elements. The debate turned on whether the anticipated use of the funds being collected through the special assessment was for a property repair or for an addition or improvement. If the work was an addition or improvement, then the bylaws required a 90% vote of the membership, but if the work was a repair, the Board could make the assessment without such a super-majority vote. By relying upon a Florida Court of Appeals case, the Oklahoma Court of Civil Appeals found the work to be for repairs, based upon the uncontradicted testimony of the Board president. Therefore, on appeal, the trial court was reversed and the permanent injunction against the assessment

was vacated.

12. TAX DEED NOTICE DEFECTS:

Franks v. Noble, 2007 OK CIV APP 39, (decided 04/06/2007; mandate issued 05/03/2007): The Court of Civil Appeals affirmed the trial court which quieted title in certain record title owners against a certificate tax deed holder. The tax certificate sale process was deemed defective because: (1) two of the four record title holders were erroneously omitted from the tax rolls, and consequently no attempt was made to give them notice of the upcoming certificate sale, thereby depriving the county treasurer of authority to conduct the sale as to their interests, and (2) the notice to the other two record title holders, which was mailed (by certified mail) to one directly and also mailed to the same person "care of" the second person at the same address as the direct mailing, both came back with the "return receipt green cards" unsigned and the notices unclaimed but with a forwarding address noted on each of the envelops, and yet rather than seek to follow up by using the new forwarding address the county relied solely on publication notice. Such failure to send anything to two record owners rendered such notice constitutionally invalid as to those parties, and such failure to pursue follow up addresses as to the other two owners rendered such notice constitutionally infirm as to them.

13. PERSONHOOD FOR AD VALOREM TAX INCREASE:

In The Matter Of The Assesments For The Year 2005 Of Certain Real Property, 2007 OK 25, (decided 04/24/2007; mandate issued _____): There is an internal exception to the constitutional limitation of 5% per year in the permissible increase in valuation of land for tax assessment purposes, whereby such limitation is removed whenever "title to the property is transferred, changed or conveyed to another person". (

OKLA. CONST. art. 10, Section 8) The title was held by two trustees of a revocable trust (who were also the sole beneficiaries) who transferred title to the land to a limited liability company who had as its two sole members, the same trustees who were the trustees and beneficiaries of the trust making the conveyance. The trial court supported the assessor's efforts to increase the valuation without limiting it to the 5%. The Supreme Court reversed the trial court and instead held that the legislative language was constitutional which implemented such constitutional provision by specifically providing in such statute that a conveyance to an LLC was not a conveyance to another person if the members of the grantee LLC were the same persons as the grantors. Such appellate ruling overturned an earlier Attorney General Opinion (2003 OK AG 39) which held the statute to be unconstitutional.

14. IMPLIED ROAD DEDICATION:

Bowen v. Tucker, 2007 OK CIV APP 57, (decided 05/31/2007; mandate issued 06/22/2007): A permanent injunction was granted by the trial court and affirmed by the Oklahoma Court of Civil Appeals. Such injunction was requested by a property owner who sought to establish the existence of a public road by implied dedication. The construction and maintenance of the road by the county, along with testimony that such construction and maintenance was requested by all of the opposing parties, provided sufficient evidence to support equitable estoppel.

V. TITLE EXAMINATION STANDARDS

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. § 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. § 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, 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))

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* <u>*the title standards*</u> *adopted by the Oklahoma Bar Association. . .",* (emphasis added) <u>or</u>

(2) IF proceeds from the <u>sale of oil or gas production</u> are being held up due to an allegedly unmarketable title [52 O.S. 570.10.D.2a; also see: <u>Hull, et al. v. Sun Refining</u>, 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. <u>IMPETUS FOR STANDARDS: PROBLEMS WITH SEEKING PERFECT TITLE</u>

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 <u>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.</u> 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. <u>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.</u> (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 <u>Bayse</u>:

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 were submitted to

and approved by the Section and the House of Delegates in November 2007. 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 where an existing standard is being revised, a "legislative" format is used below. Additions are underlined, and deletions are shown by [brackets].

2007 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2007, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 9, 2007. Additions are underlined, deletions are by strikeout.

The Title Examination Standards Committee of the Real Property Law Section proposed 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 8, 2007.

These Proposals were approved by the Section and were presented to and approved by the House of Delegates at the OBA Annual Meeting on Friday, November 9, 2007. 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.

[NOTE THAT THE FIRST TWO PROPOSALS ARE FOR TOTALLY NEW STANDARDS AND THE THIRD ONE IS FOR A REVISION]

Proposal 1.
The committee recommends adding a new Standard 24.13 to clarify to examiners what parties have standing to bring a mortgage foreclosure action.

Standard 24.13. Standing of Nominee or Agent:

An agent or nominee has standing to bring a cause of action to foreclose the lien of a mortgage, if the agent or nominee remains the record holder of the mortgage lien.

Comment: An examiner's opinion of the adequacy of such foreclosure proceedings shall be formed in the same manner as in a review of any other foreclosure action.

Authority: 12 O.S.Section 2017A; *Mortgage Electronic Registration Systems, Inc. v. Azize*, Case No. 2D05-4544 (Fla. App. 2/21/2007) (Fla. App., 2007); *Greer v. O'Dell*, 305 F.3rd 1297 (11th Cir. 2002).

Proposal 2.

The committee recommends adding a new Standard 29.2.1. to give examiners guidance on when a Certificate Tax Deed or Resale Tax Deed may be relied upon without further requirement.

Standard 29.2.1. Reliance on Certificate Tax Deed or Resale Tax Deed:

A title examiner may rely, without further requirement, on a certificate tax deed or resale tax deed as a conveyance of the real property described in such deed, provided:
A. title to such real property is, or has been, held of record by a purchaser for value who acquired such title from or through the grantee in such tax deed; and,
B. such certificate tax deed or resale tax deed has been of record in the county in which the land is situated for a period of not less than ten years.

Authority: 16 O.S. Section 62 (d)

Caveat: The title acquired via a certificate tax deed or resale tax deed may be subject to the interest of any person in possession of the land claiming title adversely to the title acquired through such deed. 16 O.S. Section 62(d). Also see the following unpublished case: Johnson v. August, 2005 OK CIV APP 97.

Proposal 3.

The committee recommends amending Standard 35.2 to reflect the change in the title of the applicable legislation and to update the citations of authority for this standard.

Standard 35.2 [Soldiers and Sailors] <u>Servicemembers</u> Civil Relief Act

The [Soldiers and Sailors' Civil Relief Act of 1940] <u>Servicemembers' Civil Relief Act</u>, and amendments thereto, are solely for the benefit of those in military service; and, if the court has presumed to take jurisdiction and there is nothing in

the record that would affirmatively indicate that any party affected by the court proceeding was in military service, the form of the affidavit as to military service or its entire absence from the record does not justify the rejection of title.

Authority: Hynds v. City of Ada *ex rel.* Mitchell, 195 Okla. 465, 158 P.2d 907 (1945), 1945 OK 167; Wells v. McArthur, 77 Okla. 279, 188 P.322 (1920), 1920 OK 96; State *ex rel* Commissioners of the Land Office v. Warden, 197 Okla. 97, 168 P.2d 1010 (1946), 1946 OK 155; Snapp v. Scott, 196 Okla. 658, 167 P.2d 870 (1946), 1946 OK 114.

D. MOST USED STANDARDS

1. WHAT IS MARKETABLE TITLE?
2. WHAT DEFECTS ARE CURED BY THE 30-YEAR MARKETABLE RECORD TITLE ACT?
3. WHAT DEFECTS ARE CURED BY THE SIMPLIFICATION OF LAND TITLES ACT?
4. WHEN DOES THE LACK OF RECITAL OF THE GRANTOR'S MARITAL STATUS, OR THE LACK OF SIGNATURE BY A SPOUSE, CEASE BEING A TITLE DEFECT?
5. WHEN DOES THE LACK OF A WRITTEN RELEASE OF MORTGAGE CEASE BEING A TITLE DEFECT?
6. WHEN DOES (A) THE LACK OF AN ACKNOWLEDGEMENT (OR THE USE OF AN IMPROPER OR INCOMPLETE ACKNOWLEDGEMENT), (B) A MISSING/UNFILED POWER OF ATTORNEY, OR (C) A CORPORATE SIGNATURE DEFECT, CEASE BEING A TITLE DEFECT?

ISSUE#1: What is marketable title?

RESPONSE:

Summary

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.

Real Estate Purchase Contract

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. . .",*
>
> Oklahoma Supreme Court

> *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.*
>
> Knowles v. Freeman, 1982 OK 89, ¶16, 649 P.2d 532

> *"Marketable title is determined under §540 [now §570.10] pursuant to the Oklahoma Bar Association's title examination standards."*
>
> Hull, et al. v. Sun Refining, 1989 OK 168, ¶9, 789 P.2d 1272

Oklahoma Statutes

> *D. 1. Except as otherwise provided in paragraph 2 of this subsection, where proceeds from the sale of oil or gas production or some portion of such proceeds are not paid prior to the end of the applicable time periods provided in this section, that portion not timely paid shall earn interest at the rate of twelve percent (12%) per annum to be compounded annually, calculated from the end of the month in which such production is sold until the day paid.*

2. a. Where such proceeds are not paid because the title thereto is not marketable, such proceeds shall earn interest at the rate of six percent (6%) per annum to be compounded annually, calculated from the end of the month in which such production was sold until such time as the title to such interest becomes marketable. Marketability of title shall be determined in accordance with the then current title examination standards of the Oklahoma Bar Association.

52 O.S. § 570.10.D.2a

Title Examination Standard
(**copies of the Title Examination Standards Handbook can be found at www.eppersonlaw.com)**

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.

Cross Reference: See Standard 30.1.

Authority: Pearce v. Freeman, 122 Okla. 285, 254 P. 719 (1927); Campbell v. Harsh, 31 Okla. 436, 122 P. 127 (1912); Empire Gas & Fuel Co. v. Stern, 15 F.2d 323 (8th Cir. 1926); Sipe v. Greenfield, 116 Okla. 241, 244 P. 424 (1926); McCubbins v. Simpson, 186 Okla. 417, 98 P.2d 49 (1939); Hawkins v. Wright, 204 Okla. 955, 226 P.2d 957 (1951).

Comment: Marketable title is a title free of adverse claims, liens and defects that are apparent from the record. Any objections should be reasonable and not based on speculation. For purposes of this definition, words describing the quality of title such as perfect, merchantable, marketable and good, mean one and the same thing.

ISSUE#2: What defects are cured by the 30-Year Marketable Record Title Act (MRTA: 16 O.S.§§71-80)?

RESPONSE:

Title Examination Standard (see Standards 30.1-30.14):

Summary Response

All title defects and liens and encumbrances which are recorded before the "root of title" (that deed or decree which has been recorded at least 30 years) can be ignored, except for the following:

1. The Patent, grant or other conveyance from the government;
2. Easements or interests in the nature of an easement;
3. Unreleased leases with indefinite terms such as oil and gas leases;
4. Unreleased leases with terms which have not expired;
5. Instruments or proceedings pertaining to bankruptcies;
6. Use restrictions or area agreements which are part of a plan for subdivision development;
7. Any right, title or interest of the United States;
8. Instruments recorded before the Root of Title but referred to in the Root of Title;
9. Instruments recorded before the Root of Title but referred to in an instrument recorded after the Root of Title;
10. Mineral instruments, if the minerals were severed from the surface before the Root of Title;
11. Any deed imposing restrictions on alienation without prior consent of the Secretary of Interior (Indian titles);
12. Any instruments, if the title stems from a tribe of Indians or from a patent where the US holds title in trust for an Indian.

Detailed Standard:

30.13 ABSTRACTING

Abstracting under the Marketable Record Title Act shall be sufficient when the following is shown in the abstract:

A. The patent, grant or other conveyance from the government.

B. The following title transactions occurring prior to the first conveyance or other title transaction in "C." below: easements or interests in the nature of an easement; unreleased leases with indefinite terms such as oil and gas leases; unreleased leases with terms which have not expired; instruments or proceedings pertaining to bankruptcies; use restrictions or area agreements which are part of

a plan for subdivision development; any right, title or interest of the United States.

C. The conveyance or other title transaction constituting the root of title to the interest claimed, together with all conveyances and other title transactions of any character subsequent to said conveyance or other title transaction; or if there be a mineral severance prior to said conveyance or other title transaction, then the first conveyance or other title transaction prior to said mineral severance, together with all conveyances and other title transactions of any character subsequent to said conveyance or other title transaction.

D. Conveyances, title transactions and other instruments recorded prior to the conveyance or other title transaction in "C." which are specifically identified in said conveyance or other title transaction or any subsequent instrument shown in the abstract.

E. Any deed imposing restrictions upon alienation without prior consent of the Secretary of the Interior or a federal agency, for example, a Carny Lacher deed.

F. Where title stems from a tribe of Indians or from a patent where the United States holds title in trust for an Indian, the abstract shall contain all recorded instruments from inception of title other than treaties except (1) where there is an unallotted land deed or where a patent is to a freedman or inter-married white member of the Five Civilized Tribes, in which event only the patent and the material under "B.", "C.", "D." and "E." need be shown, and (2) where a patent is from the Osage Nation to an individual and there is of record a conveyance from the allottee and a Certificate of Competency, only the patent, the conveyance from the allottee, the Certificate of Competency, certificate as to degree of blood of the allottee and the material under "B.", "C.", "D." and "E." need be shown.

The abstractor shall state on the caption page and in the certificate of an abstract compiled under this standard:

"This abstract is compiled in accordance with Oklahoma Title Standard No. 30.13 under 16 O.S. §§ 71-80."

ISSUE#3: What defects are cured by the 10-Year Simplification of Land Titles Act (SLTA: 16 O.S.§§61-63,66)?

RESPONSE:

Title Examination Standard (see Standards 29.1-29.6):

Summary Response

Through the proper application of the SLTA, the examiner can rely upon deeds and decrees as being valid which are part of the record being relied upon to establish the continuous chain of title, although there might have been "off the record" defects (e.g., recorded powers of attorney that are invalid according to unknown facts which are outside the official record). Such deeds and decrees must have been recorded for at least 10 years, and the person relying upon such passage of time must be a subsequent purchaser for value rather than being the grantee under the subject deed or decree. Such 10-year window of opportunity for the filing of any challenges to such recorded deed or decree was deemed sufficient by the state legislature.

A purchaser for value, who acquires an interest in real estate from a person who is claiming title under a conveyance which is at least 10-years old, shall have a valid title (as to that instrument) even if such earlier conveyance was defective (for one of the reasons listed below) even if the new purchaser for value knew of the defect.

The title defects which are extinguished by the passage of 10 years include the following:

1. Conveyances of incompetent persons unless the county or court records reflect a determination of incompetency or the appointment of a guardian;
2. Ccorporate 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;
5. Guardian's or personal representative's conveyances approved or confirmed by the court as against (a) named wards, and (b) the State of Oklahoma or any other person claiming under the estate of a named decedent, the heirs, devisees, representatives, successors, assigns or creditors.
6. 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;
7. Sheriff's or marshal's deeds executed pursuant to an order of court having jurisdiction over the land;
8. Final judgments of courts determining and adjudicating ownership of land or partitioning same;

9. Receiver's conveyances executed pursuant to an order of any court having jurisdiction;
10. Trustee's conveyances referring to a trust agreement or named beneficiaries or indicating a trust where the agreement is not of record;
11. Certificate tax deeds or resale tax deeds executed by the county treasurer, as against any person.

Detailed Standard:

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.

ISSUE#4: When does the lack of recital of the grantor's marital interest, or the lack of signature by a spouse cease being a title defect?

RESPONSE

Summary Response:

If a deed or other conveyance has been of record for at least 10 years, the absence of the grantor's marital status or the lack of a signature by a spouse ceases to be a threat to marketable title, assuming no lawsuit has been filed in the interim raising such issue.

Detailed Response:

Under 16 O.S. §4:

> "No deed, mortgage, or contract affecting the homestead exempt by law, except a lease for a period not exceeding one (1) year, shall be valid unless in writing and subscribed by both husband and wife, if both are living and not divorced, or legally separated, except as otherwise provided for by law."

Under 16 O.S.§13:

> "The husband or wife may convey, mortgage or make any contract relating to any real estate, other than the homestead, belonging to him or her, as the case may be, without being joined by the other in such conveyance, mortgage or contract."

Because it is impossible to determine whether any tract of land is homestead – since that depends on the current mental decision of either of the spouses – the only practical approach is to assume that every tract is homestead.

Title Standard 7.1 and 7.2 provide:

7.1 MARITAL INTERESTS: DEFINITION; APPLICABILITY OF STANDARDS; BAR OR PRESUMPTION OF THEIR NON-EXISTENCE

The term "Marital Interest", as used in this chapter, means the rights and restrictions placed by law upon an individual landowner's ability to convey or encumber the homestead and the protections afforded to the landowner's spouse therein.

Severed minerals cannot be impressed with homestead character and therefore, the standards contained in this chapter are inapplicable to instruments relating solely to previously severed mineral interests.

Marketability of title is not impaired by the possibility of an outstanding marital interest in the spouse of any former owner whose title has passed by instrument or instruments which have been of record in the

office of the county clerk of the county in which the property is located for not less than ten (10) years after the date of recording, where no legal action shall have been instituted during said ten (10) year period in any court of record having jurisdiction, seeking to cancel, avoid or invalidate such instrument or instruments on the ground or grounds that the property constituted the homestead of the party or parties involved.

Authority: 16 O.S. § 4.

Comment: See Title Examination Standard 6.7 as to use of powers of attorney.

7.2 MARITAL INTERESTS AND MARKETABLE TITLE

Except as otherwise provided in Standard 7.1, no deed, mortgage or other conveyance by an individual grantor shall be approved as sufficient to vest marketable title in the grantee unless:

A. The body of the instrument contains the grantor's recitation to the effect that the individual grantor is unmarried; or

B. The individual grantor's spouse, identified as such in the body of the instrument, subscribes the instrument as a grantor; or

C. The grantee is the spouse of the individual grantor and that fact is recited by the grantor in the body of the instrument.

Comments:

1. *There is no question that an instrument relating to the homestead is **VOID** unless both husband and wife subscribe it. Grenard v. McMahan, 441 P.2d 950 (Okla. 1968). It is also settled that husband and wife must execute the same instrument, as separately executed instruments will both be void, Thomas v. James, 84 Okla. 91, 202 P. 499 (1921). It is essential to make the distinction between a valid conveyance and a conveyance vesting marketable title when consulting this standard. 2.*

2. *While 16 O.S. § 13 states that "The husband or wife may convey, mortgage or make any contract relating to any real estate, other than the homestead, belonging to him or her, as the case may be, without being joined by the other in such conveyance, mortgage or contract," joinder by husband and wife must be required in all cases due to the impossibility of ascertaining from the record whether the property was or was not homestead or whether the transaction is one of those specifically permitted by statute. See 16 O.S. §§ 4 and 6 and Okla. Const. Art. XII, §2. A well-settled point is that one may not rely upon recitations, either in the instrument or in a separate affidavit, to the effect that property was not the homestead. Such a recitation by the grantor may be strong evidence when the issue is litigated, but it cannot be relied upon for the purpose of*

establishing marketability. Hensley v. Fletcher, 172 Okla. 19, 44 P.2d 63 (1935).

3. *If an individual grantor is unmarried and the grantor's marital status is inadvertently omitted from an instrument, or if two grantors are married to each other and the grantors' marital status is inadvertently omitted from an instrument, a title examiner may rely on an affidavit executed and recorded pursuant to 16 O.S. § 82 which recites that the individual grantor was unmarried or that the two grantors were married to each other at the date of such conveyance.*

Caveat: These recitations may not be relied upon if, upon "proper inquiry," the purchaser could have determined otherwise. Keel v. Jones, 413 P.2d 549 (Okla. 1966).

4. *A non-owner spouse may join in a conveyance as part of a special phrase placed after the habendum clause, yet be omitted from the grantor line of a deed, and still be considered a grantor to satisfy paragraph B. of this title standard.*
Melton v. Sneed, 188 Okla. 388, 109 P.2d 509 (1940).

ISSUE#5: When does the lack of a written release of mortgage cease being a title defect?

RESPONSE

Summary Response:

When a recorded mortgage has been of record for 30 years, its lien is treated as being extinguished, by statute. (46 O.S. §301)

However, if the mortgage shows a due date for the last payment, then 7 years from that due date, its lien is treated as being extinguished, by statute. (46 O.S.§301)

Detailed Response:

46 O.S.§301 provides:

> *A. Before November 1, 2001, no suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust shall be had or maintained after the expiration of ten (10) years from the date the last maturing obligation secured by such mortgage, contract for deed or deed of trust becomes due as set out therein, and such mortgage, contract for deed or deed of trust shall cease to be a lien, unless the holder of such mortgage, contract for deed or deed of trust either:*
> *1. Before October 1, 1981, has filed or caused to be filed of record a written Notice of Extension as provided in paragraph 1 of subsection D of this section; or*
> *2. After October 1, 1981, and within the above described ten-year period, files or causes to be filed of record a written Notice of Extension as provided in paragraph 1 of subsection D of this section.*
> *B. Beginning November 1, 2001, no suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust shall be had or maintained after the expiration of seven (7) years from the date the last maturing obligation secured by such mortgage, contract for deed or deed of trust becomes due as set out therein, and such mortgage, contract for deed or deed of trust shall cease to be a lien, unless the holder of such mortgage, contract for deed or deed of trust, within the seven-year period, files or causes to be filed of record a written Notice of Extension as provided in paragraph 1 of subsection D of this section.*
> *C. No suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust filed of record in the office of the county clerk, in which the due date of the last maturing obligation secured by such mortgage, contract for deed or deed of trust cannot be ascertained from the written terms thereof, shall be had or maintained after the expiration of thirty (30)*

years from the date of recording of the mortgage, contract for deed or deed of trust, and said mortgage, contract for deed or deed of trust shall cease to be a lien, unless the holder of such mortgage, contract for deed or deed of trust either:
1. Before October 1, 1981, has filed or caused to be filed of record a written Notice of Maturity Date as provided in paragraph 2 of subsection D of this section; or
2. After October 1, 1981, and within the above described thirty-year period, files or causes to be filed of record a written Notice of Maturity Date as provided in paragraph 2 of subsection D of this section.
D. 1. The Notice of Extension required under subsection A or B of this section, to be effective for the purpose of this section, shall show the date of recording, the book and page and the legal description of the property covered by the mortgage, contract for deed or deed of trust and the time for which the payment of the obligation secured thereby is extended, and shall be duly verified by oath and acknowledged by the holder of the mortgage, contract for deed or deed of trust.
2. The Notice of Maturity Date required under subsection C of this section, to be effective for the purpose of this section, shall show the date of recording, the book and page and the legal description of the property covered by the mortgage, contract for deed or deed of trust and the maturity date to which the last maturing obligation secured thereby is extended, and shall be duly verified by oath and acknowledged by the holder of the mortgage, contract for deed or deed of trust.
E. Any mortgage, contract for deed or deed of trust barred under this section shall not be a defect in determining marketable record title.
F. The notice required to be filed of record by this section must be recorded in the office of the county clerk of the county or counties where the mortgage is recorded.
G. Nothing contained in this section shall be construed to revive the lien of any mortgage, contract for deed or deed of trust which has expired by limitation before the effective date of this section.

TITLE EXAMINATION STANDARD 24.8:

24.8 UNENFORCEABLE MORTGAGES AND MARKETABLE TITLE

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

Authority: 46 O.S. § 301.

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

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

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

ISSUE#6: When does (a) the lack of an acknowledgement (or the use of an improper or incomplete acknowledgement), (b) a missing/unfiled Power of Attorney, or (c) a corporate signature defect, cease being a title defect?

RESPONSE

Summary Response:

After the document has been of record for 5 years, without a challenge being filed.

Detailed Response:

TITLE EXAMINATION STANDARD:

Standard 6.1:

6.1 DEFECTS IN OR OMISSION OF ACKNOWLEDGMENTS IN INSTRUMENTS OF RECORD

With respect to instruments relating to interests in real estate:

A. The validity of such instruments as between the parties thereto is not dependent upon acknowledgments, 16 O.S. § 15.

B. As against subsequent purchasers for value, in the absence of other notice to such purchasers, such instruments are not valid unless acknowledged and recorded, except as provided in Paragraph C herein, 16 O.S. § 15.

C. Such an instrument which has not been acknowledged or which contains a defective acknowledgment shall be considered valid notwithstanding such omission or defect, and shall not be deemed to impair marketability, provided such instrument has been recorded for a period of not less than five (5) years, 16 O.S. §§ 27a & 39a.

Standard 6.7:

6.1 DEFECTS IN OR OMISSION OF ACKNOWLEDGMENTS IN INSTRUMENTS OF RECORD

With respect to instruments relating to interests in real estate:

A. The validity of such instruments as between the parties thereto is not dependent upon acknowledgments, 16 O.S. § 15.

B. As against subsequent purchasers for value, in the absence of other notice to such purchasers, such instruments are not valid unless acknowledged and recorded, except as provided in Paragraph C herein, 16 O.S. § 15.

C. Such an instrument which has not been acknowledged or which contains a defective acknowledgment shall be considered valid notwithstanding such omission or defect, and shall not be deemed to impair marketability, provided such instrument has been recorded for a period of not less than five (5) years, 16 O.S. §§ 27a & 39a.

Standard 12.3:

12.3 CONCLUSIVE PRESUMPTIONS CONCERNING CORPORATE INSTRUMENTS RECORDED FOR MORE THAN FIVE YEARS

The following defects may be disregarded after an instrument from a corporation has been recorded for five years:

A. the instrument has not been signed by a proper officer of the corporation,

B. the instrument is not acknowledged, and

C. any defect in the execution, acknowledgment, recording or certificate of recording the same.

Authority: 16 O.S. § 27a.

APPENDICES

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

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

OBA REAL PROPERTY LAW SECTION
TITLE EXAMINATION STANDARDS COMMITTEE

2008 TES Committee Meeting Schedule
(Third Saturday: January through September)

January 19 - Tulsa

February 16 - Stroud

March 15– OKC

April 19- Stroud

May 17 - Tulsa

June 21- Stroud

July 19- OKC

August 16- Stroud

September 20 - Tulsa

APPENDIX 2
LATEST T.E.S. COMMITTEE AGENDA

2008 AGENDA
(As of April 17, 2008)

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

Sub-Comm.	Std.	Status	Description

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

_____APR 19/STROUD_____

Epperson	Leg	Apr Report	LEGISLATIVE UPDATE Any recently enacted legislation, or bills likely to be introduced, will be discussed.
Carson Rheinberger Reid Ademuyiwa	12.2	Apr 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]
Astle Raunikar Brown Sharp	NEW	Apr Report	GUARDIANSHIP SALES Do we need a Guardianship Sale Standard and how should the examiner handle a guardianship sale under "PSE" (43A OS Section 10-101 et seq)—Protective Services For Vulnerable Adults Act.[raised by Dale Astle]
McEachin	NEW	Apr Report	MRTA Does the decision in the recent Rocket case impact the assumption that the MRTA is "self-executing" and whether the MRTA is applicable to severed minerals? Also see the earlier Anderson case and Bennett cases. Also, does the stray deed language of the MRTA, as it was recently amended, destroy the use of the MRTA by

			making “root of title” documents unreliable, if they fail to come from the correct prior root of title?

_____MAY 17/TULSA_____

Epperson	30.13	May Report	ABSTRACTING Due to Regulations and specific rulings by the State Auditor(who regulated the Abstractors until January 1, 2008), it appears that TES 30.13 which directs abstractors to prepare “short” “30-year” abstracts for the use of examining attorneys, is incorrect, and should be eliminated.

Wimbish Hardwick Astle	15.2	May Draft	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 from the Trust by a purported trustee. This determination is being conducted several transactions later. [raised by OLTA Board]

Epperson	NEW	May Report	JUDGMENTS/DECREES & CONSTRUCTIVE NOTICE Under the MRTA, the SLTA, and under the terms of the Uniform Abstractors Certificate, do documents that are not 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?

Astle	NEW	May Report	LEGAL DESCRIPTIONS

Doyle Sharp			Surveyors are starting to use alternative grid reference systems which produce different metes and bounds descriptions. Do we need a Standard dealing with legal descriptions in general and those new ones relating to the "plane coordinate system"?

_____JUN 21/STROUD_____

Wimbish Doyle	25.5	Jun Report	OKLAHOMA ESTATE TAX LIEN The question was raised as to how to reflect the legislated end of State Estate Taxes and the resulting liens.

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

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

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

Wimbish Doyle Hardwick Stitt	15.2	Dormant	TITLE TO TRUST HELD UNDER AN EXPRESS PRIVATE TRUST (INTO TRUST BUT OUT OF TRUSTEE) 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 then the title is conveyed, or encumbered, not by (i.e., not in the name of) the trust but by the trustee (as if the trustee is the owner/grantor). This determination is being conducted several transactions later. [raised by Cory Hicks, attorney in Guymon]

(Epperson) ???	New	Dormant	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]

COMMITTEE OFFICERS:

Chair: Kraettli Q. Epperson, OKC (405) 848-9100 fax: (405) 848-9101
kqelaw@aol.com

Comm. Sec'y: Janet Sharp, Norman (405) 625-4236 fax: (405) 359-9073
sharplawfirm@yahoo.com

(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2008\Agenda2008 04(Apr))

APPENDIX 3
OKLAHOMA T.E.S. COMMITTEE MEMBERS (FOR PRIOR YEAR)

2007 Title Examination Standards Committee

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

David Anderson, Tulsa
Dale L. Astle, Tulsa
Rickey Avery, Oklahoma City
Rusty Brown, Tulsa
Barbara L. Carson, Tulsa
William Doyle, Tulsa
Alan C. Durbin, Oklahoma City
Martha M. Hardwick, Tulsa
A. Daniel Ogunbase, Oklahoma City
D. Faith Orlowski, Tulsa
Nils Rauniker, Wilburton
O. Saul Reid, Oklahoma City
Henry P. Rheinburger, Oklahoma City
Jack Sargent, Oklahoma City
Janet Sharp, Oklahoma City
Keith Stitt, Tulsa
Scott Sullivan, Oklahoma City
Kimberly Thomas, Oklahoma City
John B. Wimbish, Tulsa

APPENDIX 4

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

KRAETTLI Q. EPPERSON:
PROFESSIONAL LECTURES & PUBLICATIONS: SELECTED LIST
ORGANIZED BY TOPIC
(Last Revised March 7, 2008)

ABSTRACTING

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

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

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

CORPORATE EXECUTION

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

ENVIRONMENTAL ISSUES

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

FUTURE OF REAL PROPERTY

176. "A Status Report: On-Line Images of Land Documents in Tulsa and Oklahoma Counties and Beyond", The Oklahoma Bar Association Real Property Law Section Title Examination Standards Committee: Richard Cleverdon Roundtable Seminar, Tulsa, Oklahoma (June 24, 2005), Oklahoma City, Oklahoma (June 30, 2005)

171. "A Status Report: On-Line Images of Land Documents in Tulsa and Oklahoma Counties and Beyond", The Oklahoma City Commercial Lawyers Association, Oklahoma City, Oklahoma (December 21, 2004)

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

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

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

129. "Technology In Today's Real Estate Practice", Commercial Real Estate Seminar, OBA Real Property Section, Oklahoma City, Oklahoma (December 15, 1999) and Tulsa, Oklahoma (December 16, 1999)

HOMESTEAD ISSUES

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

HOMEOWNERS ASSOCIATIONS & CONDOMINIUMS

184. "Amending the Governing Documents for Condominiums and Homeowners' Associations", Lorman Education Systems, Special Issues for Condominiums and Homeowners' Associations in Oklahoma, Oklahoma City, Oklahoma (February 24, 2006)

17. "Pets, Parking and Pools: Association Rules and Regulations," Representing Homeowners Associations: Condominiums, Townhomes and Other PUDs, Oklahoma City University Law School, Oklahoma City, Oklahoma (September 9, 1986)

LEASES

95. "Residential Leases—The Landlord's Perspective", Oklahoma Bar Association, Tulsa, Oklahoma (February 23, 1996) and Oklahoma City, Oklahoma (March 1, 1996)

8. "Landlord's Lien," Landlord-Tenant Remedies (also Program Chairman), Oklahoma Bar Association, Tulsa, Oklahoma (March 16, 1984), Oklahoma City, Oklahoma (March 25, 1984)

LIENS: FIXTURES, JUDGMENTS, MATERIALMEN, MORTGAGES

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

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

67. "A Brief Analysis of USA v. Ward, 985 F.2d 500 (10th Cir. 1993): The Federal Loan

Programs' Inextinguishable Mortgage Lien", Presented to the Oklahoma City Commercial and Banking Lawyers Group, Oklahoma City, Oklahoma (January 20, 1994)

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

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

52. "**One Step Beyond: Judicial Creation of a Judgment Lien in Divorce Decrees**," 62 Oklahoma Bar Journal 2631 (September 14, 1991)

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

13. "Mechanics' and Materialmen's Lien: An Overview With A Discussion Of Selected Problems," Real Estate Titles And Conveyancing, Oklahoma City University Law School, Oklahoma City, Oklahoma (January 18, 1985); and Oklahoma City Title Attorney's Association, Oklahoma City, Oklahoma (February 8, 1985)

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

OIL & GAS ISSUES

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

RESIDENTIAL PROPERTY CONDITION DISCLOSURE

148. "Oklahoma Residential Property Condition Disclosure Act: An Overview", Churchill-Brown Realtors Training Meeting, Oklahoma City, Oklahoma (June 18, 2002)

TAX SALES

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

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

TITLE EXAMINATION: SELECTED ISSUES

195. "Update on Oklahoma Title Related Cases: FOR 2006-2007, The Oklahoma Bar Association Real Property Law Section Annual Meeting, Oklahoma City, Oklahoma (November 8, 2007)

194. "Marketable Title: What is it? And Why Should Mineral Title Examiners Care?", The 2007 Rock Mountain Mineral Law Foundation Institute, Westminster, Colorado (September 13, 2007)

175. "Selected Title Examination Issues", Examining and Resolving Title Issues in Oklahoma, National Business Institute, Oklahoma City, Oklahoma (June 7, 2005)

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

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

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

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

OKLAHOMA TITLE AUTHORITY: UPDATES

198. "Update on Oklahoma Title Authority: Statutes, Cases, Attorney General Opinions, & Title Examination Standards: Revisions for 2006-2007", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 11, 2008)

188. "Update on Oklahoma Title Authority: Statutes, Cases, Attorney General Opinions, & Title Examination Standards: Revisions for 2006", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 12, 2007)

TITLE EXAMINATION STANDARDS: UPDATES

182. "Update on Oklahoma Title Examination Standards: Revisions for 2006 (November 4, 2005)", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 13, 2006)

172. "Update on Oklahoma Title Examination Standards: Revisions for 2005 (November 12,
2004)", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 10, 2005)

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

152. "Update on Oklahoma Title Examination Standards: Revisions for 2003 (November 22, 2002)", The Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 10, 2003)

144. "Update on Oklahoma Title Examination Standards: Revisions for 2002 (November 16, 2001)", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 11, 2002)

137. "Update on Oklahoma Title Examination Standards: Revisions for 2001 (November 17, 2000)", Oklahoma City Real Property Attorneys (Lawyers) Association, Oklahoma City, Oklahoma (January 12, 2001)

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

TITLE INSURANCE: SELECTED ISSUES

183. "Favorite Title Examination Standards Relating to Title Insurance", Oklahoma Land Title Association Advanced Title Insurance Seminar, Oklahoma City, Oklahoma (February 8, 2006)

126. "An Overview of Selected Title Insurance Issues In Oklahoma", The Oklahoma Association of Professional Mortgage Women, Oklahoma City, Oklahoma (February 9, 1999)

123. "Avoiding Title Pitfalls" & "Title Insurance", Oklahoma Association of Realtors/Real Estate Seminar, Stillwater, Oklahoma (October 8, 1998)

TRUST ISSUES

115. "Can Bankers Trust Trusts? Or A Brisk Walk Thru 'Never-Never' Revocable Trust Land", Oklahoma City Commercial Law Attorney's Association, Oklahoma City, Oklahoma (April 21, 1998)

APPENDIX 5
NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER REPORT

(MORE INFORMATION AVAILABLE ON-LINE AT www.EppersonLaw.com**)**

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER

(Effective July 31, 2007)

STATUS REPORT

State		Last Revised		Standards		
		Pre-2002	2002+	#Ch.	#Stands.	#Pgs.
1.	Arkansas	12-20-00	-	22	110	65
2.	Colorado	-	07-01-06	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	-	00-00-05	23	71	122
10.	Louisiana	00-00-01	-	25	233	99
11.	Maine	-	02-13-07	09	71	88
12.	Massachusetts	-	11-07-06	NA	73	101
13.	Michigan	-	05-00-04	28	252	442
14.	Minnesota	-	06-23-06	NA	96	84
15.	Missouri	05-15-80	-	NA	26	17
16.	Montana	c. 1955	-	NA	76	78
17.	Nebraska	-	01-30-04	16	98	115
18.	New Hampshire	-	07-15-07	13	179	36
19.	New Mexico	00-00-50	-	06	23	05
20.	New York	01-30-76	-	NA	68	16
21.	North Dakota	-	12-00-06	18	190	229
22.	Ohio	-	11-07-03	NA	53	44
23.	Oklahoma	-	11-17-06	23	116	109
24.	Rhode Island	-	07-00-03	14	72	72
25.	South Dakota	-	06-21-03	NA	66	58
26.	Texas	-	06-22-07	16	89	88
27.	Utah	06-18-64	-	NA	59	13
28.	Vermont	-	04-04-03	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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