

**“DEFENSIBLE TITLE” WHEN EXAMINING OIL AND GAS INTERESTS:
AN OVERVIEW OF THE LAW IN OKLAHOMA**

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Mr. Dowd is a member of the Legal Committee of the Interstate Oil and Gas Compact Commission, and the Advisory Council to the Marginal Well Commission of Oklahoma.

Mr. Dowd has written numerous articles for publication including:

Clearing Title of Long-Lost Mineral Owners, 54 Rocky Mountain Mineral Law Institute 30-1 (2008)

Costs That Can Be Charged In Calculation of Risk Penalties Under Forced Pooling Actions and Non-Consent Penalties Under Operating Agreements, 25 Energy & Min. L. Inst. Ch 10. (2005)

Preferential Rights to Purchase in Oil and Gas Transactions, 49 Rocky Mountain Mineral Law Institute 5-1 (2003)

Mr. Dowd is also the author of the chapter on Oil and Gas Titles in West Publishing Company's Oklahoma Real Estate Forms and Practice.

Mr. Dowd's primary area of practice is oil and gas law, including the rendering of title opinions, litigation and the drafting and negotiations of industry contracts.

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Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor
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- SELECTED PUBLICATIONS:
"Well Site Safety Zone Act: New Life for Act", 80 OBJ 1061 (May 9, 2009);
"The Elusive Mortgage Foreclosure Judgment Lien", V.41, No.5& 6 Okla. County Bar
Assn Briefcase 9 & 18, (May and June 2009); and
"Who Suffers if the County Clerk Mis-Indexes a Conveyance or a Money Judgment?"
V.41, No.8 & __ Okla. County Bar Assn. Briefcase 7 & __, (Aug. & Sep. 2009).
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II. OVERVIEW (BY KRAETTLI Q. EPPERSON)¹

A. INTRODUCTION

According to Kuntz: “With respect to ordinary land transactions, it is well established that, in the absence of a specific provision on the subject, it is implied in every executor contract for the sale of land that the vendor must provide merchantable or marketable title. The same is true in the instance of contracts for the execution or assignment of an oil and gas lease. The vendor need not have such title at the time the contract is entered into, provided that he is able to perform at the proper time and place, or before trial.”² The below discussion assumes that the parties have agreed to provide and to accept Defensible Title, rather than perfect, merchantable, or marketable title, and herein there is an attempt to explain, how the term, Defensible Title, is to be used in evaluating the adequacy of title to oil and gas properties being conveyed by a seller to a buyer. Principally, the focus is on the underlying title for oil and gas leases being sold and assigned by the lessee to a buyer.

The approach taken in this article is: (1) to discuss whether there is authority -- from statutes, case law, and treatises -- in the oil and gas industry, either inside or outside Oklahoma, defining the term “Defensible Title”, standing alone, when determining whether title is adequate to enforce a sale between knowledgeable parties in the oil and gas industry, (2), because such definitive legal guidance does not appear to exist, to discuss what guidance the authorities do give us in at least a general sense, and (3) to explore what language can be found in typical asset purchase and sale agreements, which provide a definition for at least that particular transaction.

¹ The assistance of attorneys Joshua Greenhaw and Rob Varnum in researching and drafting parts of this article is gratefully acknowledged.

² Eugene Kuntz, *A Treatise on the Law of Oil and Gas*, Anderson Publication Company, 1989, §19.11 *Marketable title and abstracts of title*.

In addition, for one's further study, a list of suggested related articles and other authorities on this subject is provided.

It should be noted that the assumption made herein is that the vendee rather than the vendor bears the risk associated with establishing the absence of Defensible Title. The determination as to who shall be the bearer of such risk is set by the terms of the purchase and sale agreement ("PSA") utilized by the parties. Therefore, there may be instances where the PSA places the burden on the vendor.

B. WHAT DEFENSIBLE TITLE IS

A search of the court cases and statutes in Oklahoma failed to reveal any express definition of "Defensible Title" provided. Nationally, the search for a specific definition for "Defensible Title" was also fruitless.

As a recent professional article declared: "*There is no legally or commonly accepted meaning for 'defensible title', so it must be defined in each asset purchase agreement.*"³

Defensible title has generally been defined as: "...[S]omething less than marketable; it is imperfect on the record but is possible to defend."⁴ So, it is generally understood: "Defensible Title" is a lower standard than "perfect or marketable title."

This lack of specific objective guidance concerning "defensible title" creates the requirement that one must look to any agreement of the parties (i.e., the PSA between the seller and buyer) for guidance.

³ Allen D. Cummings, Randy Browne *Meeting of the Minds on Title Defects*, 48 Rocky Mtn. Min. L. Inst. 27, 27.07 (2002).

⁴ See Thomas P. Schroedter, *Oil and Gas Title Examination and Title Curative: Marketable v. Defensible Title*, COMPREHENSIVE LAND PRACTICES, AN AAPL PUBLICATION at III-48 (1st ed. 1984), note 5.

C. WHAT DEFENSIBLE TITLE IS NOT

It is generally understood that “perfect title” and “marketable title” are higher standards than “Defensible Title”. To help understand how they are different, it is beneficial to view Defensible Title as that which “perfect title” and “marketable title” are not.

*“If the term ‘free from defects’ means free from all flaws or defects, both of record and in fact, we are speaking of the perfect title, and long ago Lord Chancellor Hardwick stated that ‘it is impossible in the nature of things that there should be a mathematical certainty of a good title.’”*⁵

In other words, practically speaking, there is no such thing as a truly “perfect” title. In addition, “merchantable title” and “marketable title” are usually used interchangeably, and such terms will be treated in the articles as covering the same quality of title.⁶

Under Oklahoma’s Production Revenue Standards Act⁷ the Title Examination Standards adopted by the Oklahoma Bar Association (“Standards”) are the official gauge used to determine whether a producer will have to pay 6% or 12% interest on proceeds from sales of production not timely tendered to a royalty owner. If title is “marketable” under such Standards, then the higher rate of interest must be paid. In other words, the producer is penalized when the title is really marketable, but proceeds are held up. 52 O.S. § 570.10.D. provides:

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

⁵ *Standards of Mineral Title Examination—Marketable Title vs. Defensible Title*, G.D. Ashabranner, 9 Mineral Law Institute 95 (Rocky Mountain Mineral Law Institute, 1964).

⁶ The Oklahoma Supreme Court views the terms “merchantable title” and “marketable title” as synonyms. See Knowles v. Freeman, 649 P.2d 532, 535 (Okla. 1982), 1982 OK 89. ¶16

⁷ 52 O.S. §§ 570.1 to 570.15.

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.

b. Where marketability has remained uncured for a period of one hundred twenty (120) days from the date payment is due under this section, any person claiming to own the right to receive proceeds which have not been paid because of unmarketable title may require the holder of such proceeds to interplead the proceeds and all accrued interest into court for a determination of the persons legally entitled thereto. Upon payment into court the holder of such proceeds shall be relieved of any further liability for the proper payment of such proceeds and interest thereon.

(underlining added)⁸

In Oklahoma, the Standards define marketable title as: “[Title] free from apparent defects, grave doubts and litigious uncertainty, [consisting] of both legal and equitable title fairly deducible of record.”⁹ Marketable title has also been defined as title that is saleable (i.e., that which a purchaser can be required to accept) as opposed to being perfect.¹⁰

The Standards are not only made applicable to oil and gas matters by such Statute, but, in general, are deemed by the Oklahoma Supreme Court as being “persuasive”, which makes them the equivalent of an opinion from the Oklahoma Court of Civil Appeals.¹¹

If a PSA required “marketable title”, then, according to Oklahoma case law:

“A purchaser under such a contract is not required to resort to evidence dehors [outside] the record. It is not sufficient that the title is good in fact; that is, capable

⁸ See also Hull, et al. v. Sun Refining, 789 P.2d 1272 (Okla. 1990), 1989 OK 168, ¶9 (“Marketable title is determined under §540 [now §570.10] pursuant to the Oklahoma Bar Association’s title examination standards.”).

⁹ 16 O.S. App. § 1.1.

¹⁰ See Thomas P. Schroedter, *Oil and Gas Title Examination and Title Curative: Marketable v. Defensible Title*, COMPREHENSIVE LAND PRACTICES, AN AAPL PUBLICATION at III-48 (1st ed. 1984).

¹¹ See Knowles v. Freeman, *supra* note 5 (The title examination standards are persuasive in authority); see also OK AG Opin. 79-230.

of being made good by the production of affidavits or other oral testimony. It must be good of record...the court said: 'The title may be good; but one to whom an abstract showing a good title has been promised as a condition precedent is not bound to accept any evidence thereof, except that contained in the abstract. The vendee in such a case is not required to accept or rely upon parole evidence of title, or information dehors the record, or the word of the vendor.' It was therefore held that the purchaser was not obliged to accept the title, which was bad of record, although capable of being made good by evidence showing adverse possession for the statutory period of time... 'A title is not marketable where it depends necessarily upon matter in pais [without legal proceedings], which is in itself a doubtful fact, and never can be determined or established, except by bringing every party into court...."¹²

Hence, assuming a PSA only requires a defensible title the title being provided by a seller does **not** have to be:

1. Perfect, without even minor defects;
2. Marketable;
3. Of record;
4. Free from the need to rely on parole evidence;
5. Free from the need to rely on affidavits; and
6. Free from the need for litigation to prove the title is valid.

D. SAMPLE PSA DEFINITIONS

Like other contracts crafted by parties wise in the ways of the industry involved, oil and gas buyers and sellers use certain standard language.

The followed excerpted language includes some samples from asset purchase agreements defining the quality of title expected to be provided by sellers to buyers, when the parties are looking for "defensible title."

(1) First Version of "Defensible Title"

"(a) As to each of the Wells, that title or operating rights of Seller which:

¹² Campbell v. Harsh, 122 P. 127, 129 (Okla. 1912), 1912 OK 165, ¶10 (summarizing numerous authorities, citations omitted, ancient terms explained).

(1) entitles Seller to receive from each well not less than the interests shown on Exhibit “A,” and

(2) obligates seller to bear a percentage of the costs and expenses relating to the maintenance and development of, and operations relating to, each well not greater than the working interest shown on Exhibit “B.”

(b) That title of Seller to the assets at closing is free and clear of liens and encumbrances (except Permitted Encumbrances).”

(2) Second Version of “Defensible Title”

(same as version (1) above, followed by)

“fairly deducible of record and/or provable title evidenced by documentation that although not constituting perfect , merchantable, or marketable title, can be successfully defended if challenged.”

(3) Third Version of “Defensible Title”

(same as version (1) above, preceded by)

“title which sellers can successfully defend against a claim to the contrary made by a third party, based upon industry standards in the acquisition of oil and gas properties, and in the exercise of reasonable judgment and in good faith...”.

(4) Fourth Version of “Defensible Title”

(same as version (1) above, preceded by)

“a record or beneficial title that...”

(5) Fifth Version of “Defensible Title”

(same as version (1) above, preceded by)

“clean, unencumbered, uncontested, record title to an interest in the Sellers that is (i) evidenced by instruments filed of record in accordance with the conveyance and recording laws of the applicable jurisdiction...”

(6) Sixth Version of “Defensible Title”

(same as version (1) above, preceded by)

“such interest of record...”

“is free from reasonable doubt, so that a willing and reasonably prudent buyer...would be willing to accept the title.”

If the definition requires “record title” (examples 5 and 6 above), then such definition becomes synonymous with “marketable title,” which according to Standard 1.1 (as quoted above) requires “both legal and equitable title fairly deducible of record.”

Otherwise, in the absence of a request for title being “of record,” the definition will only require a title which can be “made good,” because it is “provable.”

E. WHAT IS THE SELLER’S BURDEN TO ESTABLISH THE “PROVABLE TITLE”

If the Seller is tasked with providing defensible title, where it means “provable title,” then the buyer is in the position of challenging the title as if it were the plaintiff in a lawsuit (e.g., by a lessor against a lessee, seeking to cancel or terminate an oil and gas lease.)

Consequently, each separate title would have to be reviewed under the applicable statutes and case law to determine whether a lessor could successfully reclaim such title. As noted in another professional article: “*The concept of a defensible title is one which, if challenged, has sufficient merit under the relevant court decisions to be successfully defended...*”¹³

¹³ See e.g. Robert G. Pruitt, Jr. *Mining Claim Titles for Investors and Lenders*, 33 Rocky Mtn. Min. L. Inst. 9, 9.08 fn. 71 (1988).

Consequently, it is clear, where the terms of the PSA require “defensible title” and not “record title” (i.e., it defines “defensible title” as “provable,” or “record or provable,” or “record or beneficial”), then, where the buyer specifically describes a condition allegedly making the subject title less than “defensible title”, the title to each property will be subject to a reasonable scrutiny. Such due diligence will presumably include (1) a search for all discoverable facts, (2) the identification of the applicable law, and (3), most importantly, an evaluation as to what would be the likely result of a challenge in the form of litigation by a hypothetical lessor, who is attempting to defeat the lessee’s claim.

Under the terms of such PSA, defensible title is necessarily viewed through the lens of litigation. Defensible title is, again by definition, NOT free from litigious uncertainty. By the very definition set forth in such PSA, defensible title is that which “can be successfully defended if challenged.” Litigious uncertainty [i.e., a court challenge] is, by definition, expected.

Courts have used the term “burden of proof” to refer to two distinct concepts: burden of persuasion and burden of production.¹⁴ The burden of persuasion refers to a plaintiff’s (or counter-plaintiff’s) ultimate burden of persuading the court to accept its position. Thus, “if the evidence is evenly balanced, the party that bears the burden of persuasion must lose.”¹⁵ The burden of production refers to “a party’s obligation to come forward with evidence to support its claim.” Id. Once a plaintiff meets its burden of production, the burden of producing evidence then shifts to the other party, although the burden of persuasion generally does not change.¹⁶ As a hypothetical plaintiff, the buyer has (1) the burden of persuasion to prove each element or issue of the cause of action (which is non-shifting),¹⁷ and (2) the burden of production to provide

¹⁴ See Harder v. F.C. Clinton, 948 P.2d 298, 303 n 13, 1997 OK 137, n 13 (Okla. 1997).

¹⁵ Id. at 303 n 13 (quoting Director, OWCP v. Greenwich Collieries, 512 U.S. 267, 271-72 (1994)).

¹⁶ See Harder, 948 P.2d at 303.

¹⁷ See Id.

evidence at each stage to offset the evidence most recently provided by the hypothetical defendant.¹⁸ The plaintiff starts out with both the burden of persuasion and the burden of production.¹⁹

In other words, the buyer, as plaintiff, could shift only the burden of production for a particular issue by making a *prima facie* case as to that issue. However, if the buyer does not make its *prima facie* case, the buyer does not shift the burden of production, and a ruling in the seller's favor is the result.

Remember, however, as the plaintiff, **the buyer always has the burden of persuasion**, which must be satisfied in a civil matter (such as a suit to resolve title issues) by the preponderance of the evidence standard.²⁰

In the example above, whereby the buyer is a hypothetical plaintiff in a suit to terminate a lease, the buyer must disclose facts and law, which, when applied to each issue, will result in the claimed leasehold interests being adjudged unenforceable against the lessee.

Explained another way, in such a transaction, the burden of production and the burden of persuasion is on the buyer, and they require the buyer to present both evidence and law which establish that the seller fails to have defensible title. Until the buyer meets such burdens, the seller has no obligation to present anything.

By way of example, if the buyer claims a certain number of mineral acres were not owned by the lessor of a lease because the lessor is the putative heir of a decedent, and neither a pre-death assignment nor a probate exists conveying the mineral acres from the decedent to the lessor, the buyer must (1) document facts showing: (a) the decedent owned the mineral acres of

¹⁸ See *Id.*

¹⁹ See generally 29 AM. JUR. 2D *Evidence* § 174 (2009); see also *Ferguson v. Lambert*, 225 P.2d 354, 356 (Okla. 1950), 1950 OK 307, ¶8???

²⁰ In civil cases, the plaintiff generally must prove his case by a preponderance of the evidence. See *Christian v. Gray*, 65 P.3d 591, 611 (Okla. 2003); see also *McKellips v. Saint Francis Hosp.*, 741 P.2d 467, 471 (Okla. 1987).

record, (b) the decedent died (testate or intestate) (c) no valid assignment of the acreage exists of record, (d) the lessor, who was not the decedent, signed the lease; and (2) set forth the Oklahoma law applicable to such facts holding that a probate of the decedent's estate would cure the defect by transferring the mineral acres to the lessor. The seller would then (and only then) be required to come in and set up its defenses, for example: (1) there was a signed but unrecorded mineral deed covering the mineral acres in question from the decedent to the lessor executed prior to the decedent's death, or (2) provide an affidavit of heirship showing the decedent had only two heirs, one of which is the lessor, and provide an unrecorded quitclaim deed from the other heir to the lessor, or (3) obtain affidavits stating what the affiants would testify to if the matter were litigated, as to the existence of a will of the decedent, valid under Oklahoma law, leaving all assets of the decedent to the lessor. Such evidence and law provided by the seller would then indicate the title, though not perfect, of record or marketable, is provable, and, therefore, is **defensible**.

F. CONCLUSION

Defensible title, if defined in the PSA as non-record or "beneficial" or "provable title," then it can be less than perfect or marketable title and does not need to be provable of record. Instead, assuming there is a challenge (as in a lawsuit), such title needs to simply be provable by recorded and/or non-recorded documentation, including affidavits of heirship, unrecorded conveyances, joint interest billings, forced pooling affidavits, and other practical proof which is shown to be usually relied on in the industry.

Consequently, the buyer, as the hypothetical plaintiff, has the burden of persuasion and the burden of production to show that the seller's title is not defensible, for each title defect through the production of facts to meet the standards of the law relevant to each issue. If and

when the buyer meets such burdens, the seller is then responsible for defending its title, through the production of facts (such as affidavits and extra-record matters) to counter the buyer's evidence.

III. PANEL: SAMPLE TITLE FACT PATTERNS AND QUESTIONS

A. Samples by John Myles:

1. Joint Tenants/Life Tenants

Marketable Title: Judicial proceedings conclusively establishing the death of the interest owner have been conducted and the applicable order or decree has been recorded.

Affidavit terminating the interest that complies with 58 O.S. Section 912.C has been recorded.

Defensible Title: The joint tenant/life tenant is deceased, causing the interest to terminate by operation of law, and no estate tax is due. But, nothing has been recorded. Seller will provide a “no tax due” letter from the OTC.

2. Intestate Decedent

Marketable Title: Judicial proceedings have been conducted and the applicable order or decree has been recorded for more than ten (10) years.

No proceedings have been conducted, but an affidavit of death and heirship that complies with TES X has been recorded for more than ten (10) years.

Defensible Title: Judicial proceedings have been concluded but the final decree has not been recorded for more than ten (10) years, if at all.

3. Mortgages

Marketable Title: The record contains a properly executed release.

It can be conclusively established from facts contained in the record that the mortgage is unenforceable pursuant to 46 O.S. Section 301.

Defensible Title: There is a properly executed release, but it has not been recorded.

No release has been executed, but the underlying obligation has been paid in full.

The mortgagee is still alive/in existence, acknowledges payment of the debt, and is willing to execute and deliver a release.

The mortgagee is dead/ceased to exist, so judicial proceedings will be necessary.

4. Corporate Successorship

Marketable Title: A certified copy of the Articles of Merger/Name Change are included in the record.

Defensible Title: Applicable articles of merger/name change are obtainable from the applicable Secretary of State's office and recorded.

5. Trust (judicial relationship) as Seller

Marketable Title: Title is held by "John Smith, as Trustee of the John Smith Revocable Trust dated January 1, 2009", and the conveyancing instrument is executed in that manner.

Defensible Title: John Smith has been succeeded as trustee of the trust and the current trustee(s) is able and willing to provide a copy of the trust agreement and documentation evidencing the death/resignation of John Smith and his succession.

6. Trust (as an entity) as Seller

Marketable Title: Title is held by "The John Smith Revocable Trust dated January 1, 2009", the record contains a Memorandum of Trust that complies with 58 O.S. Section 175.6a, and the conveyancing instrument is executed by the current trustee(s) as established by the Memorandum.

Defensible Title: John Smith has been succeeded as trustee of the trust and the current trustee(s) is able and willing to provide a Memorandum of Trust that complies with 58 O.S. Section 175.6a.

B. Samples by Tim Dowd:

1. Cogburn Oil & Gas Properties, Valari B. Wedel, Clint Properties, Inc., Greg and Renee Holeman, Kent and Susan Wedel, TLW Investment, Inc., The Sara Lansden Rosen Revocable 1987 Trust and the Jill L. Wilson 1987 Revocable Trust owned working interests in Lease Z (insofar as it covered the S/2 NE/4 and the W/2 SE/4 below 8,970 feet) and Leases CC-EE. These leases are part of the Stricker #2-9 well located in the NE/4 of Section 9.

Each party executed assignments to Louis Dreyfus Gas Holdings Inc., in September, 1991. These assignments are located in Book 1 at Page 119, Book 2 at Page 1, Book 3 at Page 7, Book 4 at Page 1, Book 5 at Page 95, Book 6 at Page 90, Book 7 at Page 2 and Book 88 at Page 221. The assignments purport to assign all right, title and interest in and to the lands described on Exhibit "A". On Exhibit "A", the wrong leases are listed, but the well name, Stricker #2-9 is listed correctly. These parties did not own any interest in the leases purported to be conveyed, i.e. Leases AA and FF-II. Exhibit "A" should have listed Leases Z and CC-EE.

REQUIREMENT:

You should obtain correction assignments correctly listing the leases assigned as Leases Z (insofar as it covered the S/2 NE/4) and Leases CC-EE. These correction assignments should be filed for record with the Washington County Clerk's office.

2. You will note that we credit certain mineral interests under Tract 2 lands, as detailed above, in Allie Viola Strucker, presumably the sole heir of Howard Strucker. You will note that Allie Viola Strucker has executed Oil and Gas Lease A, as detailed above, and this examiner has presumed that Allie Viola Strucker is the sole and only heir or devisee of Howard Strucker.

REQUIREMENT:

You should obtain and submit for examination the full probate proceedings indicating that Allie Viola Strecker is, in fact, the sole and only heir of Howard Strecker and succeeded to the undivided 1/48 interest in and to the oil, gas and other minerals underlying the NW/4, Section 1-1N-2W, Washington County, Oklahoma. Be advised that in the event of production, a complete copy of the probate proceedings regarding the estate of Howard Strecker should be submitted for examination.

3. Between 1949 and 1962 L.E. Thorpe, individually, and L.E. Thorpe and Marie T. Thorpe, as husband and wife in joint tenancy, acquired title to and conveyed various quantities and types of interest in the minerals underlying Tract 7, including both executory rights and non-participating mineral interest as well as full mineral interests. Although whether the various deeds of record by the Thorpes were intended to convey the joint tenancy interest owned by them or the individual interest owned by L.E. Thorpe is subject to various interpretations, it is our opinion that in 1962, L.E. Thorpe and Marie T. Thorpe, husband and wife as joint tenants, were the record owners of 2.00 acres of executory rights in Tract 7. It is also possible that the Thorpes owned some royalty interest in joint tenancy at that time.

By Quitclaim Deeds dated August 17, 1962 and filed in Book 739, Page 1 and 3, Leonard E. Thorpe a/k/a L.E. Thorpe, a single man, conveyed all of his interest in Tract 7 to W.E. Halley. Although there is no affidavit or judicial determination of record in Washington County concerning the death and Marie T. Thorpe, we presumed that she died prior to August 17, 1962, and that any interest she may have owned in Tract 7 was conveyed by the subject deeds.

REQUIREMENT:

The successor to W.E. Halley should provide for examination and record with the County Clerk of Grady County, an Affidavit Terminating Joint Tenancy executed in accordance with Oklahoma law or a judicial determination of the death and heirship of Marie T. Thorpe by an Oklahoma court. As a business risk, however, you may wish to rely upon a death certificate for Marie T. Thorpe.

4. There appears an assignment of Basic Leases 10 through 36 and 49 and Order 396388 given by Louis Dreyfus National Gas Corp. in favor of Northwest Oil & Gas Properties, Inc. This assignment was given in satisfaction of Requirement No. 27 which had required that an undivided 10% interest in and to the interest which TriPower Resources, Inc. acquired from James T. Hoke a/k/a James T. Hoke, Jr. be conveyed to the party who owned an interest therein. The assignment in question is deficient in that it purports to convey an undivided 10% interest in these leases, rather than a 10% interest in and to the interest which was acquired from J.T. Hoke, whose interest was less than the full working interest in and to the subject leases.

REQUIREMENT:

For marketable title, you should obtain, record, and submit for our examination and possible further requirement a corrective assignment of oil and gas leases which describes the defect in the instrument being corrected, property describes the interest intended to have been conveyed by way of the assignment, and is executed by both parties.

5. Materials submitted for examination reflect that Stauros Operating Company is a non-consenting party in the drilling of the captioned well. Additionally, Northwest Oil & Gas Properties participated with a 2.5% unit working interest, electing to be a non-consenting party in the drilling of the captioned well with its remaining interest. We are advised Dominion Oklahoma Texas Exploration & Production, Inc. is carrying 100% of this interest for the life of the well. We have tabulated accordingly.

REQUIREMENT:

Assignments given in respect of these parties' elections in the captioned well should be obtained, recorded and submitted for our examination and possible further requirement.

IV. SUGGESTED READINGS

1. Allen D. Cummings, Randy Browne *Meeting of the Minds on Title Defects*, 48 Rocky Mtn. Min. L. Inst. 27, (2002).
2. Thomas P. Schroedter, *Oil and Gas Title Examination and Title Curative: Marketable v. Defensible Title*, COMPREHENSIVE LAND PRACTICES, AN AAPL PUBLICATION at III-48 (1st ed. 1984).
3. G.D. Ashabranner, *Standards of Mineral Title Examination—Marketable Title vs. Defensible Title*, 9 Mineral Law Institute 95 (Rocky Mountain Mineral Law Institute, 1964).
4. Robert G. Pruitt, Jr. *Mining Claim Titles for Investors and Lenders*, 33 Rocky Mtn. Min. L. Inst. 9 (1988).
5. Benjamin F. Hackett, *Whistling Past the Graveyard to the Tune of Defensible Title*, Mineral Lawyers Society of Oklahoma City, October 20, 2005.
6. Kraettli Q. Epperson, *Marketable Title: What is it? And Why Should Mineral Title Examiners Care?*, The 2007 Rocky Mountain Mineral Law Foundation Institute, Westminster, Colorado, September 13, 2007.
7. Eugene Kuntz, *A Treatise on the Law of Oil and Gas*, Anderson Publication Company, 1989.