

## Local Real Property Filings Required For Federal Matters - or - The Proposed End Of "Standard 1.3. Federal Court Certificates"

BY KRAETTLI Q. EPPERSON

On December 2, 1965 the Oklahoma Bar Association ("OBA") House of Delegates adopted what is now known as Title Examination Standard "1.3 FEDERAL COURT CERTIFICATES" ("Standard 1.3"). The current Standard 1.3 is short and it states:

*With respect to lands in Oklahoma, Tulsa and Muskogee Counties, the abstractor's certificate should cover the records of the appropriate United States District Court with respect to judgments, court proceedings, suits pending or liens of any kind against any of the record owners during period covered by such certificate.*

The Title Examination Standards Committee (The "Standards Committee") of the OBA has approved a motion proposing the repeal of Standard 1.3. As of May 1991, certain relevant federal and state statutes have changed enough to make it clear that matters filed with the federal court, which attempt to affect real property in Oklahoma, are not constructive notice until notice of such matters is filed in the local land records.

In 1982 and 1983 the Abstracting Committee of the OBA Real Property Law Section met with a parallel committee of the Oklahoma Land Title Association ("OLTA") and they jointly approved an Abstractor's Uniform Certificate.<sup>1</sup> This proposed Uniform Certificate was subsequently adopted by the OLTA at its annual meeting on April 30, 1983.

In later efforts, however, the joint OBA/OLTA Abstracting Committee tried, but was unable, to devise uniform language for a Uniform Federal Court Certificate. This task was instead left to the individual abstractors.

Over the last four years, the Standards Committee has debated whether there is a continued need to require an examiner to look at a federal court certificate if the land under review is located in one of the counties in which a United

States District Court is located. Out of an abundance of caution, Standard 1.3, was left in place until the Oklahoma Legislature adopted the Uniform Federal Lien Registration Act ("Lien Registration Act") and Congress passed the Federal Debt Collection Procedures Act ("Debt Collection Act").<sup>2</sup> These two laws then made it clearer that all federal judgment liens and tax liens, including those in favor of federal entities, must be perfected in the same manner as other liens (i. e., by filing appropriate notices in the local land records). Once these Acts were in place, the Standards Committee was able to come to a different conclusion. Its conclusion became "No, the Federal Court Certificate, and this Standard 1.3, are no longer needed." Therefore, as noted above, the Standards Committee has adopted a proposal of the repeal of this Standard 1.3. which will be presented to the OBA Real Property Law Section and the OBA House of Delegates at the OBA Annual Meeting in November 1992.

A brief discussion of the current reasoning justifying this repeal is presented below.

28 U. S. C. Section 1964 has provided since 1958 that

*"Where the law of a State requires a notice of an action concerning real property pending in a court of the State to be...recorded...in a particular manner, or in a certain office or county...in order to give constructive notice of the action as it relates to the real property, and such law authorizes a notice of an action concerning real property pending in a United States district court to be...recorded...in the same manner, or in the same place, those requirements of the State law must be complied with in order to give constructive notice of such an action pending in a United States district court as it relates to real property in such State."*

The Lis Pendens statutes of the State of Oklahoma require and permit constructive notice of cases affecting real property, whether pending in federal or state court, to be given by filing a

*continued on page 8*

## More About Filings

continued from page 7

notice in the county land records of the county where the affected lands are located.<sup>3</sup> Oklahoma's statutes have also required final judgments affecting real property to be taken from the court house records and filed in the land records of the county where the real property is located.<sup>4</sup>

The federal statute regulating the creation of judgment liens on real property, where the money judgment arises from a proceedings in a federal court, provides that

*"Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be lien in the same manner and time. This section does not apply to judgments entered in favor of the United States. Whenever the law of any State requires a judgment of a State court to be...recorded...in a particular manner, in a certain office of county...before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be recorded."<sup>5</sup>*

12 O. S. Section 706 currently permits and requires money judgments to be filed of record in the land records where the real property is located. Until October 1, 1978, state and federal court money judgments were turned into (i. e., perfected as) liens on the judgment debtor's real property in Oklahoma by taking a certified copy of the state court judgment and filing it with the local County Court Clerk. The Court Clerk in turn indexed it on the judgment docket pursuant to 12 O. S. Section 25. Upon the completion of such indexing, the judgment became a lien upon all of the real property of the judgment debtor within that particular county. As noted above, the procedure has changed from that under the previous law and now requires one to make the filing in the land records rather than in the court records.

The exception for "judgments entered in favor of the United States", carved out of 28 U. S. C. Section 1962, has been eliminated by the recent enactment of the Debt Collection Act in May 1991.<sup>6</sup> This Debt Collection Act "provides the exclusive civil procedures for the United States--(1) to recover a judgment on a debt;..." except "...to the extent that another federal law specifies

procedures for recovering on a claim or a judgment for a debt arising under such law..."<sup>7</sup>

A "debt" under the Debt Collection Act is defined in Section 3002(3) and basically includes any amount owed to the United States on a direct loan, insured or guaranteed loan, fee, duty, lease, rent, service, sale of real or personal property, overpayment, fine, assessment, recovery of a cost incurred by the United States or "other source of indebtedness to the United States." A "judgment" is "a judgment, order, or decree entered in favor of the United States in a Court and arising from a civil or criminal proceeding regarding a debt."<sup>8</sup>

Under Section 3201 of the Debt Collection Act, "a judgment in a civil action shall create a lien on all real property of a judgment debtor on filing a certified copy of the abstract of the judgment in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of [Title 26 U. S. C.] section 6323 (f) of the Internal Revenue Code of 1986." The judgment lien takes its priority from the date of its perfection and shall last as a lien for an initial 20 year period with the possibility of an additional twenty year extension for a total of forty years.<sup>9</sup>

As provided in Section 3201 of the Debt Collection Act, you must look to Section 6323 (f) of the Internal Revenue Code of 1986, to determine the manner for perfection of these judgment liens. Section 3201 (f) (1) (A) (i) of the Debt Collection Act states: "The notice referred to in subsection (a) shall be filed--in the case of real property, in one office within the state (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated;..."

The State of Oklahoma adopted the Lien Registration Act effective as of November 1, 1988, and at Section 3403 (B) it provides: "notices of liens upon real property for obligations payable to the United States...shall be filed in the office of the county clerk of the county in which the real property subject to the liens is situated."<sup>10</sup> This Act goes on to specify that such filings on land located in Oklahoma County shall be handled pursuant to 12A O. S. Section 9-403 (4), as if the document being filed was a financing statement under the UCC. However, for lands in the other 76 counties, these filings will be made under an alphabetical index.

The culmination of the enactment of these new federal and state laws, along with substantial consideration and discussion of these issues by the Standards Committee, was the consensus that

there was no longer a need for Standard 1.3 FEDERAL COURT CERTIFICATE.

The nationwide impact of the automatic bankruptcy stay under 11 U. S. C. Section 362 (a), and the rule of law announced in 1991, in the Oklahoma case styled Bailey v. Campbell, should be noted." As a result, if there is any actual or constructive notice of a pending bankruptcy arising during the record ownership of the debtor of the property under examination, the examiner will need to explore the repercussions of such proceedings on the abstract and title under review and to determine what curative actions, if any, are necessary, because of such proceedings.

However, the post-petition bona fide purchaser receives protection under 11 U. S. C. Section 549 against the voidance by the trustee of the conveyance, assuming the conditions under Section 549 have been met and assuming the trustee had not filed a notice of the pending bankruptcy in the local land records. It is this duty of the trustee under Section 549 to file a local notice of the pendency of any bankruptcy which has allowed examiners in the other 74 counties in Oklahoma to refrain in the past from requiring the submittal of a federal court certificate. However, due to this hidden bankruptcy threat to a party acquiring title through a court proceeding or a conveyance, some examiners and title insurers will choose to continue checking the bankruptcy court records in the federal district where the subject land is located. It should be remembered, however, that the effect on a title from a bankruptcy pending in Alaska has as much impact on a title as one pending in a local district.

In order to remind examiners of the potential threat from undisclosed bankruptcies, a Caveat has been included as part of the text which will be used to replace Standard 1.3 if it is repealed. The proposed Caveat provides:

*The automatic stay of a federal bankruptcy proceeding is not subject to the requirements of Title 28 U. S. C. Section 1964. The automatic stay is generally effective without filling the notice and regardless of where the Bankruptcy is filed. (11 U. S. C. Section 362(a)) See Chapter 20 infra regarding bankruptcy proceedings.*

Comments on the proposed repeal of this Standard are hereby solicited from the examining bar and the title industry.

Footnotes:

1. Epperson, Kraettli Q., "Abstract Certificate Officially Changed", 54 OBJ 1713, June 25, 1983.
2. Uniform Federal Lien Registration Act, 68 O. S. Section 3401, et seq, effective November 1, 1988; and Federal Debt Collection Procedure Act, 28 U. S. C. Section 3001 et seq, effective May 28, 1991.
3. 12 O. S. Supp. 1991 Section 2004.2(A)(1) and its predecessors.
4. 12 O. S. Section 181.
5. 28 U. S. C. Section 1962.
6. 28 U. S. C. Section 3001 et seq.
7. 28 U. S. C. Section 3001.
8. 28 U. S. C. Section 3002(8).
9. 28 U. S. C. Section 3201(b) and (c).
10. 68 O. S. Section 3401 et seq.
11. 829 P.2d 667 (Okla. 1991), mandate issued April 22, 1992.

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