

News From OBA Sections: Local Real Property Recordings Required For Federal Money Judgments By Kraettli Q. Epperson

(Editor's Note: OBA Sections have been invited to submit short notes of Section information for publication in the Bar Journal.)

In 1982 and 1983 the Abstracting Committee of the OBA Real Property Law Section met with a committee of the Oklahoma Land Title Association ("OLTA") and they jointly approved an Abstractor's Uniform Certificate, which was adopted by the OLTA on April 30, 1983.¹

The task of devising official language for an Abstractor's Uniform Federal Court Certificate was left to the individual abstractors.

The Title Examination Standards Committee ("Standards Committee") of the OBA originally adopted Title Examination Standard 1.3 **FEDERAL COURT CERTIFICATES** ("Standard 1.3") in 1965, which 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.

Over the last several years the Standards Committee has been debating whether there is still a need for an examiner to request a federal court certificate whenever the land is located in one of the three Oklahoma counties in which a U.S. District Court is located. As of May 1991, a federal statute changed and made it clear that matters filed with the federal court, which attempt to affect real property in Oklahoma, do not constitute notice to third parties without actual notice (*i.e.*, constructive notice) until appropriate documentation of such matters is recorded in the local land records.

More specifically, 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").² These two Acts mandate that all federal court money judgments, including those in favor of federal entities, can only become liens if processed in the same manner as other liens (*i.e.*, by recordings in the local land records).

Other Statutes which were relevant in this analysis included the following:

1. **Lis Pendens and Final Orders:** Federal law has mandated that constructive notice to third persons of a real property case pending in Federal Court arises only when there is compliance with State notice procedures.³ State law provides that notice of such a pending case is given to third persons by recording a *Lis Pendens* notice in the local county clerk's land records.⁴ Under State law, constructive notice of a final judgment, order or decree affecting real property is given by recording such pleading in the local land records.⁵

2. **Money Judgments:** Federal law provided that, except for money judgments in favor of the United States, money judgments from federal courts would not become liens on the debtor's real property until they were recorded in accordance with State law, and they would continue as liens for the same time period as State money judgment liens.⁶ Over the years, the State procedures to create such liens have changed the place to record the judgment (*i.e.*, in the court clerk's office until 1978 and then in the county clerk's land records) and the form of the notice (*i.e.*, the judgment itself, then an affidavit with the judgment, then a standard form judgment and now an affidavit with a judgment).⁷ Under the Debt Collection Act, even the creation of liens from money judgments in favor of the United States must comply with State procedures.⁸



KRAETTLI Q. EPPERSON

is a Partner in the firm of Anes & Ashabranner in Oklahoma City, where his practice emphasizes commercial and real property litigation. Mr. Epperson is Co-Chairman of the Title Examination Standards Committee of the Real Property Section of the Oklahoma Bar Association. He teaches a course on Oklahoma Land Titles at the Oklahoma City University School of Law, and is a frequent writer and lecturer on real property law. He is also Chairman of the Conveyancing Committee of the American Bar Association.

Once these two Acts were in place, the Standards Committee was able to conclude that the Federal Court Certificate and Standard 1.3 were no longer needed. The proposed repeal of Standard 1.3 will be presented to the OBA Real Property Law Section and the OBA House of Delegates at the OBA Annual Meeting in November 1992.

In light of the uncertainties surrounding the impact of bankruptcy law on real property titles, a Caveat concerning undisclosed bankruptcies has been included as part of the text which will be used to replace Standard 1.3, if it is repealed.

Effective September 1, 1992, 16 O.S. Section 15 was amended — although its companion, Section 16, remained unchanged — by the addition of a sentence at the end of the existing language.⁹ The new sentence in the statute provides as follows:

No judgment lien shall be binding against third persons without actual notice thereof unless the judgment lienholder has filed his judgment in the office of the county clerk as provided by and in accordance with Section 706 of Title 12 of the Oklahoma Statutes.

Because Section 706 already deals fully with the steps needed to create a money judgment lien, and because of the use of the terms "judgment lien" and "judgment lienholder" in the new statutory language, the only reasonable interpretation of this change is that it provides guidance on how to give constructive notice of judgments that were already expressly made liens on a specific tract of land by a judge in a court proceeding, such as in a divorce decree.¹⁰ The judge-made lien clearly becomes enforceable as to the parties and as to those third parties with actual notice on and after its rendition (*i.e.*, its pronouncement from the bench). However, it

becomes constructive notice (*i.e.*, enforceable against third persons without actual notice), under this revised language in Section 15, only upon compliance with the requirements of Section 706. Consequently, this statutory change in part of the Recording Act has no impact on the existing procedures to cause the creation of money judgments liens arising from State or Federal Courts.

Comments on the proposed repeal of this Standard 1.3 are hereby solicited. A more detailed discussion of the Debt Collection Act and the Lien Registration Act is provided in a recent article of the Real Property Law Section "Lawyer" Newsletter.¹¹

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. Also see: 26 U.S.C. Section 6323(f) of the Internal Revenue Code.

3. 28 U.S.C. Section 1962.

4. 12 O.S. Section 2004.2(A)(1), and its predecessors.

5. 12 O.S. Section 181.

6. 28 U.S.C. Section 1964.

7. 12 O.S. Section 706; see: Epperson, Kraettli Q., "Judgment Lien Now Requires a Judgment Affidavit", 59 OBJ 3643 (December 1988).

8. 28 U.S.C. Section 3001 *et seq.*

9. House Bill No. 2315, Session Laws 1992, Ch.119.

10. 43 O.S. Section 134; see: Epperson, Kraettli Q., "One Step Beyond: Judicial Creation of a Judgment Lien in a Divorce Decree", 62 OBJ 2631 (September 1991).

11. See: Epperson, Kraettli Q., "Local Real Property Filings Required for Federal Matters, or The Proposed End of 'Standard 1.3 Federal Court Certificates'", OBA Real Property Law Section "LAWYER" Newsletter, Summer 1992.