

**MARKETABLE TITLE:**  
**WHAT IS IT?**  
**AND**  
**WHY SHOULD MINERAL TITLE EXAMINERS CARE?**

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## I. INTRODUCTION

The new title examiner needs to know the quality of title which the examiner must seek when preparing a title opinion, whether for surface or mineral titles. Such target quality might be valid, perfect, marketable, or merchantable. The first one only requires to enforceability between the two parties involved, while the next three are generally considered to be the same and relate to being enforceable against third parties. In the case of surface title, the purchase contract usually defines the required quality of title being sought. But in the case of mineral titles, the necessary level of title is usually dictated by state statute. In this article, those sample statutes dictating the consequences of failing to recognize that marketable title exists will be discussed.

If marketable title is the goal, then the practical definition of such title can usually be found in the state's title examination standards or in its marketable title act. A sampling of these definitions are displayed in these materials.

Through a chart comparing the chapter topics covered in several states' title standards, as well as through a listing of the standards chapter topics covered in selected states, the examiner is exposed to the standards available to assist during the examiner's title review. In addition, by way of example, a report is presented of the on-line searchable county clerks' land records that are available in Oklahoma.

In order to convince the examiner that it is important to learn what marketable title consists of, the author will focus first on the consequences of failing to seek and secure such title. Then the nature of marketable title will be explored, mainly through a review of several states' standards.

## II. IMPORTANCE AND CONSEQUENCES OF NOT SECURING

### **MARKETABLE TITLE**

Obviously, one of the goals in mineral development and production is to minimize the costs of such efforts. While the mineral owner/lessor is entitled to receipt of royalty payments at an early time, the lessee would prefer not to pay for the minerals twice: once to the apparent but not the true owner, and again to the true owner. The legislatures of most states have enacted statutes penalizing the lessee to differing degrees for delays in the payment of proceeds, depending on whether the title held by the lessee is initially marketable. So long as the quality of the current apparent title holder is clouded - - to the extent that it is not deemed "marketable" - - the rate of interest which must be paid on the withheld proceeds is lower, usually one-half the full rate, than it is if it is in fact already marketable.

Below is, by way of example, a partial listing of the state statutes (for states in the RMMLF) concerning the rates of interest due and the dates when payments of royalties are to be made (excerpted from an article written by George Snell of Amarillo, Texas, and reprinted with his permission):

### **STATUTES-ROYALTY PAYMENT**

#### **ALABAMA**

§9-17-33. Sales, Distribution of Proceeds.

Interest rate-Marketable title:	12%
Interest rate-Unmarketable Title:	Federal Reserve Discount Rate in effect as of first day of each month
Payment Due-First Sales:	6 months after first sales
After First Sales-Oil:	60 days after end of calendar month of sales
After First Sales-Gas:	60 days after end of calendar month of sales
Optional:	Semi-annual when the amount is less than \$60.00
Notice Requirements:	None
Escrow Provision:	None
Cases Interpreting:	None
History:	Acts 1982, No. 82-557

#### **ARKANSAS**

§15-74-601. Time Limits Governing Oil and Gas Payments. (formerly 53-525)  
§15-74-602. Fraudulently Withholding Payments.  
§15-74-603. Action for Non-Payment of Proceeds.  
§ 15-74-604. Failure to Pay Royalties.

Interest rate-Marketable title: 12%, unless contract provides greater; if

payment is suspended in bad faith. Court may increase up to 14%, plus reasonable attorney's fees.

Interest rate-Unmarketable Title: None  
Payment Due-First Sales: 6 months after the date of sales  
After First Sales-Oil: 60 days after end of calendar month of sales  
After First Sales-Gas: 60 days after end of calendar month of sales  
Optional: Annually if the amount is less than \$25.00  
Notice Requirements: Yes; 30 days to respond  
Escrow Provision: None  
History: Acts 1981, No 269, §1; 1983, No. 448. §1; A.S.A. 1947 §53-525

Cases Interpreting:

TXO Prod. Corp. vs. First National Bank of Russellville 288 Ark. 338, 705 S.W.2d 432 (1986)

Howell Petroleum Co. vs. Samson Resources Co. 903 F.2d 778 (10th Cir.-Ark., 1990)

Atlanta Exploration, Inc. vs. Ethyl Corporation 301 Ark., 331, 784 S.W.2d 150 (1990)

Seeco, Inc. vs. Hales 330 Ark. 402, 954 S.W.2d 234 (1997)

## **COLORADO**

§34-60-118.5. Payment of Proceeds,

Interest rate-Marketable title 2 times the discount rate at the Kansas City Federal Reserve Bank as of the first day of the calendar year when the proceeds withheld.

Interest rate-Unmarketable Title: None; compliance with deadlines is suspended if there is unmarketable title or reasonable doubt as to payor's identity.

Payment Due. First Sales: 6 months after the end of the month offset sales

After First Sales-Oil: 60 days after each calendar month of sales

After First Sales-Gas: 90 days after each calendar month of sales

Optional: Annually if the amount is less than \$25.00

Notice Requirements: Yes; 20 days to respond

Escrow Provision: None

Cases Interpreting: None

Source: L. 89: Entire section added, p, 1374, §1, effective 7/1/90

## **ILLINOIS**

765ILCS§520/10. Payments

Interest rate-Marketable title: The rate charged on loans to depository institutions by the New York Federal Reserve Bank

Interest rate-Unmarketable Title:	None
Payment Due-First Sales:	150 days after the end of each month of sales
After First Sales-Oil:	60 days after the end of each calendar month of sales
After First Sales-Gas:	90 days after the end of each calendar month of sales
Optional:	Annually if the amount due is less than \$25,00
Notice Requirements:	Yes; 30 days to respond
Escrow Provision:	None
Cases Interpreting:	None
History:	Laws 1939, p, 805 §10, added by P.A. 84-872, §2, Eff. Sept. 23, 1985 (formerly Ill. Rev. Stat. 1991, Ch. 96 ½, paragraph 4910.)

## **INDIANA**

32-5-9-1. Crude Oil Purchases-Payment in 60 days.

Interest rate:	6%
Payment due:	Within 60 days from the date of title examination
Notice Requirement:	None
Escrow Provision:	None
History:	Acts 1951, ch. 90, §1; P.L. 8-1993, §474

## **KANSAS-Interest on Proceeds from Production**

55-614.	Interest payments on payment from oil or gas production; definitions.
55-615.	Same; Interest on certain payments required~ commencement and amount of payment; exception.
55-1616.	Same; Force and effect of waivers.
15-1617.	Same; Jurisdiction of Court to settle dispute; attorney's fees.
15-1618.	Same; Non-applicability to certain interest payments.
55-1619.	Same; Rights of payee not limited or impaired.

Interest rate-Marketable Title:	1 1/2% above the interest rate charged on loans to depository institutions by the New York Federal Reserve Bank at the start of business on the first day of each month.
Interest rate-Unmarketable Title:	Apparently the same. -. Payment due- First Sales: 120 days following the last calendar day of the month first sales.
After First Sales-Oil:	60 days
After First Sales-Gas:	60 days
Optional:	Annually if the amount does not exceed

	\$100.00; payor shall provide notice to payee that there is an option to be paid monthly for proceeds greater than \$25.00
Notice Requirements:	None
Escrow Provisions:	None
History:	L. 1991, ch. c, 160 §1; L. 1996, ch. 100, §1; July I,
Cases Interpreting:	None

**LOUISIANA** (all La. Rev. Stat.)

- 31§123. Rent and the Obligation to Make Timely Payment Thereof
- 31§134. Right to Relief for Violation
- 31§137. Non-Payment of Royalty; Notice Prerequisite to Judicial Demand
- 31§138. Required Response of Lessee to Notice.
- 31§138.1. Division Orders; Precedence of Lease; Penalties for Failure to Pay Royalties Due
- 31§139. Effect of Payment in Response to Notice.
- 31§140. Effect of Non-Payment in Response to Notice or Failure to State Cause Therefore.
- 31§212.21. Non-Payment of Production Payment or Royalty; Notice Prerequisite to Judicial Demand
- 31§212.22. Required Response of Obligor to Notice.

Interest rate-Marketable title:	If Lessee pays within 30 days after notice, he owes only the royalty plus interest (no rate specified) from the date the royalty was due. At its discretion, the court may award damages, in addition to the royalty due, double the amount of royalty plus legal interest on that sum plus attorney's fees.
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Interest rate -Unmarketable Title:	Apparently the same interest is due, but a court could not impose double damages if there is a question as to ownership.
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Payment Due -First Sales:	Pursuant to the terms of the contract, or the custom of the industry.
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After First Sales -Oil:	Pursuant to the terms of the contract, or the custom of the industry,
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After First Sales -Gas:	Pursuant to the terms of the contract, or the custom of the industry.
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Optional:	Annual if the amount due is less than \$100.00
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Notice Requirements:	Yes; 30 days to respond
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Escrow Provisions:	None
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History:	1994
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Cases Interpreting:	
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Arceneaux vs. Hawkins, 376 So2d 362 (LA. App. 3 Cir. 1979)



Henry vs. Ballard & Cordell Com., 401 So2d 600 (LA. App. 3 Cir 1981)  
Trinidad Petroleum Corp. vs. Pioneer Natural Gas Co., 416 So2d 290 (LA. App. 3 Cir. 1982)  
Dawes vs. Hale, 421 So2d 1208 (LA. App. 2 Cir 1982)  
Acquisitions, Inc. vs. Frontier Exploration, Inc., 432 So2d 1095 (LA. App. 3 Cir. 1983)  
Bailey vs. Franks Petroleum Co., 479 So2d 563 (LA. App. 1 Cir.1985)  
Wegman vs. Central Transmission, 499 So2d 436 (LA. App. 2 Cir. 1986)  
Fuller vs. Franks Petroleum Co., 501 So.2d 1024 (LA. App. 2 Cir. 1987)  
Win Oil Co. Inc. vs. UPG. Inc., 509 So2d 1023 (LA. App. 2 Cir. 1987)  
Matthews vs. Sun Exploration & Production Co., 521 So2d 1122 (LA. App. 2 Cir. 1988)  
Willis vs. International Oil & Gas Com., 541 S02d 332 (LA. App. 2 Cir. 1989)  
Acadia Holiness Association vs. IMC Corp., 616 So2d 855 (LA. App. 3 Cir. 1993)  
Hanks vs. Wilson, 633 S02d 1345 (LA. App. 1. Cir. 1994)  
Lewis vs. Texaco Expl. & Prod. Co., 698 So2d 1001 (LA. App. 1 Cir. 1997)  
Wilson vs. Palmer Petroleum Co., 706 S02d 145 (LA. App. 1 Cir. 1997)  
Lamson vs. Austral Oil Co., 712 So2d 1081 (LA App. 3 Cir. 1998)

## **MISSISSIPPI**

§53-3-39. Payment of Interest on Royalty Proceeds Which Have Not Been Disbursed.

Interest rate-Marketable title:	Greater of 8% or 2% above the federal discount rate in effect as of the second day of January of each year,
Interest rate-Unmarketable Title:	Equal to the federal reserve discount rate in effect as of the second day of January of each year
Payment Due:	First Sales: 120 days after first sales
After First Sales -Oil:	60 days after the end of the month of sales
After First Sales -Gas:	60 days after the end of the month of sales
Optional:	Can accumulate for no more than 120 days if amount does not exceed \$100 00
Notice Requirements:	None
Escrow Provision:	None
History:	
Sources:	Laws, 1992, ch. c 428, §1, eff. from and after July 1, 1992

Cases Interpreting:

First National Bank of Jackson vs. Pursue Energy Corp., 799 F.2d 149 (5th Cir.–Miss., 1986)

Rehearing denied 802 F.2d 455.

Williamson vs. Elf Aquitain, Inc., 138 F.3d 546 (5th Cir -Miss., 1998),

**MONTANA**

82-1 0-103. Obligation to Pay Royalties as Essence of Contract-Interest

Interest rate-Marketable title: Maximum rate authorized under §31-1-1 07.  
Interest rate-Unmarketable title: None  
Payment Due-First Sales: 120 days after first sales  
After First Sales-Oil: 60 days after first sale  
After First Sales-Gas: 90 days after first sale  
Option: Pay every six months if the amount is less than \$50.00 and pay annually if the amount if less than \$10.00  
Notice Requirements: None  
Escrow Provision: None  
Cases Interpreting: None  
History: En. Sec. 1, ch. 500, L. 1983; Amd Sec 1, ch. 118, L. 1985

**NEVADA**

§522.0858. Expenses of Unit: Lien For Amount Accessed; Persons Primarily Responsible For Payment; Payment by Persons Not Responsible; Payment to Royalty Owners Free of Lien and Expenses.  
§522.113. Payment of Money Derived From Sale of Production; Liability for Violation; Applicability.  
§522,120. Penalties

Interest rate-Marketable title: 18%  
Interest rate-Unmarketable title: None  
Payment Due-First Sales: 6 months after the first day of month following first sale  
After First Sales-Oil: 60 days after the end of the month of sales  
After First Sales-Gas: 60 days after the end of the month of sales  
Notice Requirements: None  
Escrow Provision: Yes; at a federally insured depository institution  
History: Added to NRS by 1983,2075

**NEW MEXICO-Oil and Gas Proceeds Payment Act.**

§70-10-3. Payment of Oil and Gas Proceeds; Time for Payment.  
§70-10-3.1. Duty to Locate  
§70-10-4. Interest on Late Payments  
§70-10-5. Application; Penalty  
§70-10-6. Attorneys' Fees.

Interest rate-Marketable title: 18%  
Interest rate-Unmarketable title: Discount rate charged by the Dallas Federal

Payment Due-First Sales:	Reserve Bank to member banks, plus 1 1/2% on date payment is due; payment of principal and interest is due 30 days after final legal determination of entitlement. 6 months after the first day of the month following the date of first sales.
After First Sales-Oil:	45 days after the end of the calendar month when payment is received by payor for production.
After First Sales-Gas:	45 days after the end of the calendar month when payment is received by payor for production.
Notice Requirements:	None
Escrow Provision:	Yes
History:	1978 Comp., §70-10-1, enacted by laws 1991, ch. 235, §3.
Cases Interpreting:	
<u>Murdock vs. Pure-Lively Energy 1981-A. Ltd.</u> 108 N.M. 575,755 P.2d 1292 (1989)	

## **NORTH DAKOTA**

- §47-16-39,1. Obligation to Pay Royalty -Breach  
 §47-16-39,2. Inspection of Production and Royalty Payment Records.

Interest rate-Marketable title:	18%
Interest rate-Unmarketable title:	None
Payment Due -First Sales:	150 days after sales
After First Sales-Oil:	No provision
After First Sales-Gas:	No provision
Option:	6 months if the amount is less than \$50,00
Notice Requirements:	None
Escrow Provision:	None
Unusual Provision:	The royalty owner has a right to inspect the lessee's production records.
Source:	S.L 1961., ch. 295, §1; 198), ch, 466, §1; 1995, ch. 439, §1,

Cases Interpreting: ...

West vs. Alpar Resources, Inc., 298 N.W.2d 484 (N.D. 1980)

Imperial Oil of N.D. Inc. vs. Consolidated Crude Oil Co., 851 F.2d 206 (8th Cir.-N.D., 1988)

Acoma Oil Corporation vs. Wilson, 471. N.W.2d 476 (N.D 1991)

**OKLAHOMA-Production Revenue Standards Act**

52§540. (Prior to 7/1/93): Time for Payment -Persons to Whom Payable -Interest -  
Division Order - Information Included With Payment - Violations -  
Penalties - Jurisdiction

52§570.10. (Effective 7/1/93): Payment of Proceeds From Sale of Oil and Gas  
Production.

Interest rate-Marketable title:	12%
Interest rate-Unmarketable title:	6%, until the title becomes marketable.
Payment Due. First Sales:	6 months after the date of first sale.
After First Sales-Oil:	Prior to 7/1/93: 60 days after the end of the month of sales. Effective 7/1/93: The last day of the third succeeding month after the end of the month of sales.
After First Sales-Gas:	Prior to 7/1/93: 60 days after the end of the month of sales. Effective 7/1/93 -General Rule: The last day of the third succeeding month after the month of sales;
Option:	Annually if the amount is under \$ 100.00; must pay monthly is requested.
Notice Requirements:	None
Escrow Provision:	Interpleader may be required by Claimant if unmarketability remains uncured 120 days after payment is due. Interest obligation ceases when proceeds paid into court.
History:	Law 1980, c. 205, §1, eff. July 1, 1980. Laws 1985, c. 141, §11; Laws 1989, c. 241, §1, eff. July 1, 1989. Renumbered from §540 by Laws 1992 c. 190, §28. Amended by Laws 1992, c. 190 §10, eff. July 1, 1993; Laws 1993, c. 337, §2, eff. July I, 1993; Laws 1995, c. 146, § 1.

Cases Interpreting 52§540:

Howell Petroleum Corp. vs. Samson Resources Co., 903 F.2d 778 (10th Cir., Okla. 1990)

McClain vs. Ricks Exploration Co., 894 P.2d 422 (Okla. App. 1994)

Oryx Energy Co. vs. Plains Resources, Inc., 918 P.2d 397 (Okla. App. 1994)

Panhandle Eastern Pipeline Co. vs. State of Okla., 83 F.3rd 1219 (10th Cir., Okla. 1996)

A. R. Heiman vs. Atlantic Richfield Co., 891 P.2d 1252 (Okla. 1995)

Rove Real~ & Developing, Inc. vs. Watson, 949 P.2d 1208 (Okla. 1996)

Cases Interpreting 52§570.10:

Tulsa Energy, Inc. vs. KPL Production Co., 111 F.3rd 88 (10th Cir. Okla. 1997)

**TEXAS** (Tex. Nat. Res. Code Ann.)-Payment for Proceeds of Sale

§91.401.	Definitions
§91.402.	Time for Payment of Proceeds.
§91.403.	Payment of Interest on Late Payments.
§91.404.	Non-Payment of Oil and Gas Proceeds or Interest.
§91.406	Attorneys' Fees and Minimum Award
§91.407.	Notice of Change of Payor

Interest rate-Marketable title:	2 points above the rate charged on loans to depository institutions by the New York Federal Reserve Bank
Interest rate-Unmarketable title:	None
Payment Due-First Sales:	120 days after the end of the month of first sale
After First Sales-Oil:	60 days after the end of the month of sales
After First Sales-Gas:	90 days after the end of the month of sales
Option:	12 months if less than \$100.00 is due; must pay monthly if written request and amount is more than \$25.00 but less than \$100.00
Notice Requirements:	Yes; 30 days to respond
Escrow Provision:	None; however, liability for interest may be terminated upon delivery of proceeds and accumulated interest to the state treasurer §91.403.
Unusual Provision:	(1) can suspense without interest if submit statutory division order 91.402(c)& (d); (2) new payor must identify himself in writing to each payee within the time permitted for the payment of proceeds 91.407.
History:	Acts 1983, p. 966, ch. 228, §1, eff. September 1, 1983. Amended by Acts 1991, ch. 650, §2, eff. August 26, 1991, Amended by Acts 1995, ch. 681, §1, eff. June 15, 1995.
Cases Interpreting:	<u>Northern Natural Gas Co. vs. Vanderburg</u> , 785 S. W.2d 415 (T~. App.-Amarillo, 1990, no writ) <u>Edwin M. Jones Oil Co. vs. Pend Oreille Oil &amp; Gas Co.</u> , 794 S.W.2d 442 (Tex. App.-Corpus Christi 1990, writ denied) <u>Harrison vs. Bass Enterprises Prod. Co.</u> , 888 S.W 2d 532 (Tex. App.-Corpus Christi 1994, No writ) <u>Heritage Resources, Inc. vs. NationsBank</u> , 895 S. W.2d 833 (Tex. App.-EI Paso, 1995, reversed at 939 S.W.2d 118 (Tex. 1997)) <u>Koch Oil Company vs. Wilber</u> , 895 S.W.2d 854 (Tex. App.-Beaumont, writ denied) <u>Sun Operating Lim. Part. vs. Oatman</u> , 911 S.W.2d 749 (Tex App. .San Antonio 1995, writ denied) <u>Luecke vs. Wallace</u> , 951 S. W .2d 267 (Tex. App.-Austin 1997, no writ)

Shivers vs. Texaco Explo. and Prod., Inc., 965 S. W.2d 727 (Tex. App.-Texarkansas, 1998, no writ)

Concord Oil Company vs. Pennzoil Expl. and Prod. Company, 966 S.W.2d 451 (Tex. 1998)

## **UTAH**

§40-6-9. Proceeds From Sale of Production -Payment of Proceeds-Requirements-Proceeding on Petition to Determine Cause of Non-Payment - Remedies - Penalties,

Interest rate-Marketable title: 11.2%

Interest rate-Unmarketable title: Proceeds should be escrowed and earn highest rate offered by the depository institution for the amount and term of similar demand deposits.

Payment Due -First Sales: 180 days after the first day of the month following the date of first sales

After First Sales-Oil: 30 days after the end of the month when payment is received by payor for production.

After First Sales-Gas: 30 days after the end of the month when payment is received by payor for production, Option: Annually if \$100.00 or less

Notice Requirements: None

Escrow Provision: Payor must escrow at a federally insured depository institution if payments cannot be timely made.

Unusual Provision: Payee can request hearing before board.

History: C. 1953, 40-6-9, enacted by L. 1983, ch. 205, §1; 1989 ch. 86, §2; 1992 ch. 34, §4; 1993 ch. 151, § 1.

Case Interpreting:

Bennion vs. Utex Oil Co., 905 F.2d 324 (10th Cir.-Utah 1990)

In Re of Sam Oil, Inc. et al., 817 P.2d 299 (Utah 1991)

Cowling vs. Board of Oil, Gas and Mining, Department of Natural Resources for the State of Utah, et al., 830 P.2d 220 (Utah 1992)

Bennion vs. Graham Resources, Inc., 849 P.2d 569 (Utah 1993)

## **WYOMING-Payment for Interests in Production**

§30-S-30 1. Payment for Production Time For Payment; Payor.

§30-5-302. Payment for Production Interest Only Payment.

§30-S-303 Payment for Production; Penalty for Violation; Jurisdiction; Cost and Fees.

§30-S-304. Definitions.

§30-S-305. Collections; Reporting and Remittance of Royalties.

Interest rate-Marketable title:	18%
Interest rate-Unmarketable title:	None
Payment Due-First Sales:	6 months after the first day of the month following the date of first sale.
After First Sales-Oil:	60 days after the end of the month of sales
After First Sales-Gas:	60 days after the end of the month of sales
Option:	Annually if \$100.00 or less is due
Notice Requirements:	None
Escrow Provision:	Payor must escrow at a federally insured depository institution if payments cannot be timely made.
History:	Laws 1982, ch. 270, §1; 1997, ch. 133, §1.
Cases Interpreting:	
<u>Independent Producers Marketing Corp. vs. Cobb</u> ,	721 P.2d 1106 (Wyo. 1986)
<u>Connaghan vs. 80-8 Oil Company</u> ,	750 P.2d 1321 (Wyo. 1988)
<u>State vs. BHP Petroleum Company</u> ,	804 P.2d 671 (Wyo. 1991)
<u>Moncrief vs. Harvey</u> ,	816 P.2d 97 (Wyo. 1991)
<u>Cities Service Oil &amp; Gas Corp. vs. State</u> ,	838 P.2d 146 (Wyo. 1992)
<u>Ferguson vs. Coronado Oil Company</u> ,	884 P.2d 971 (Wyo. 1994)
<u>Amoco Production Co. vs. E. M. Nominee Partnership Company</u> ,	886 P.2d 265 (Wyo. 1994)
<u>ANR Pro. Co. vs. Kerr-McGee Corp.</u> ,	893 P.2d 698 (Wyo. 1995)

### III. DEFINITION OF MARKETABLE TITLE

#### **TYPES OF TITLE**

As noted above, title typically falls into two sets of categories: (1) valid, and (2) marketable, or merchantable, or perfect.

Valid title describes the respective rights between the two parties to a conveyance itself (e.g., the grantor and grantee) where the courts will typically – in the absence of fraud or coercion -- enforce the transfer. However, in the absence of recording or where there's a defect in recording such conveyance, such transfer will usually not be binding on third parties. The persons directly involved in the conveyance are usually referred to as “the party of the first part” and “the party of the second part”; hence, all others are “third parties”. In another words, “third parties” are persons who are not the parties to the conveyance itself.

Marketable title (sometimes called merchantable, or good, or perfect title, in various jurisdictions) refers to that quality of title which is sufficiently reflected in the local public land records so as to allow the apparent owner to convey adequate title to new buyers or lenders, so that (1) such prospective new buyers or encumbrancers would be bound to accept such title if a suit for specific performance was instituted by the seller to enforce the contract, and (2) such new owners and lienholders could defeat claims arising from third parties asserting that they had previously acquired the same interest from the same seller or one of the seller's predecessors, although such interest was not recorded.

As stated in Title Examination Standard 1.1 from the Ohio State Bar Association Title Examination Standards:

*A marketable title is one which a purchaser would be compelled to accept in a suit for specific performance.*

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 therefore.* (underlining added) (77 Am Jur 2d §123 Special Provisions as to character of title: Generally.)

The terminology which is used to define the quality of title to real property has apparently changed over time. Patton notes:

*In the early law courts, titles as between vendor and purchaser were either good or bad; there was no middle ground. No matter how subject to doubt a purchaser might prove the title to be, he was under obligation to take it, unless he could prove that it was absolutely bad. But the courts of equity coined the expression "marketable title," to designate a title not necessarily perfect, or even good, in the law sense, but so free from all fair and reasonable doubts that they would compel a purchaser to accept it in a suit for specific performance. Conversely, an unmarketable title might be either one that was bad, or one with such a material defect as would cause a reasonable doubt in the mind of a reasonable, prudent, and intelligent person, and cause him to refuse to take the property at its full or fair value. Therefore the term "unmarketable title" includes both "bad titles" and "doubtful titles." Though originally there might have been a difference between a "good title" and a "marketable title," now the terms are used interchangeably. Other equivalent terms appear in the notes. A perfect record title may not be marketable, because of apparent defects, which cause reasonable doubts concerning its validity, and a good or marketable title may be far from perfect, because of hidden defects. In*

*fact, under either the English system of unrecorded conveyances, or under the system afforded by our recording acts, "it is impossible in the nature of things that there should be a mathematical certainty of a good title." While examiners should be cautious in advising clients as to the acceptance of a title, neither should they frighten them by advertising these relatively infrequent dangers; and they must remember that a purchaser cannot legally demand a title which is absolutely free from all suspicion or possible defect. He may require only such a title as prudent men, well advised as to the facts and their legal bearings, would be willing to accept. Many courts further hold that a doubt sufficient to impair the character of marketableness must be such as will affect the selling value of the property or interfere with the making of a sale.*

*If unmarketable, the doubt which makes it so may be based upon an uncertainty either as to a fact or as to the law. If objection is made because of doubt upon a question of law, this does not make the title unmarketable unless the question is fairly debatable -- one upon which the judicial mind would hesitate before deciding it. Likewise as to a question of fact, there must be a real uncertainty or a difficulty of ascertainment if the matter is to affect marketability. A fact which is readily ascertainable and which may be readily and easily shown at any time does not make title unmarketable. For instance, where a railway company reserved a right of way for its road as **now** located and constructed or hereafter to be constructed, the easement depended on the fact of the **then** location of the line; and as the evidence showed that no line had then been located, and as the matter could be easily and readily proved at any time, the clause did not make plaintiff's title unmarketable. But where there are known facts which cast doubt upon a title so that the person holding it may be exposed to good-faith litigation, it is not marketable.*

*Recorded muniments form so generally the proofs of title in this country, that the courts of several jurisdictions hold not only that a good or marketable title must have the attributes of that term as used by the equity courts, but also that it must be fairly deducible of record. This phase of the matter will be considered further in the ensuing section.*

*Determination of questions as to the marketability of titles is peculiarly within the province of counsel for buyer or mortgagee. Counsel for the owner will not only endeavor to remedy the condition of the title as to any requirements which he concedes to be proper, but usually finds it easier to do so than to contest the matter, even as to matters not so conceded. In the main it is only when compliance is impossible or when time for compliance is lacking or has passed that the question reaches the courts. Even then a decision is not always possible. This is because courts usually will not undertake to determine doubtful questions involving the rights of others who are not parties to the action. (underlining added) (§46. Classification of Vendor Titles)*

## TENDANCY TOWARDS CONSERVATIVE EXAMINATION

As noted in Bayse:

*Time cures certain errors in conveyancing by means of statutes of limitations. The healing effect of curative legislation removes other defects of conveyancing. But operation of these kinds of legislation neither defines nor declares what constitutes a marketable title. The usual definition of a marketable title is one which is free from all reasonable doubt. This negative approach is not now satisfactory, for it is a rare title concerning which an examiner cannot entertain some doubt with respect to some transaction in its history. (underlining added) (Paul E. Bayse, Clearing Land Titles (herein "Bayse"): §8. Legislation)*

It is this focus on looking for a defect -- any defect -- whether substantive or merely a technical one, that can cause the system to bog down. If there is more than a single title examiner within a community, there is also the possibility of there being a wide range of examination attitudes resulting in differing conclusions as to the adequacy of the title.

In "Increasing Land Marketability Through Uniform Title Standards", 39 Va.L.Rev. 1 (1953), John C. Payne, (herein "Increasing Marketability") the problems caused by each examiner exercising unbridled discretion are noted:

*When the examiner, upon the basis of these decisions, has found that the present vendor can convey a title which is good in fact, he must then ask whether the title has the additional characteristic of marketability. What constitutes a marketable title? Here again legal definitions are subordinate to functional meaning. What the purchaser of land wants is a title which not only can be defended but which can be presented to another examiner with the certainty that it will be unobjectionable. It is small comfort to the owner that he has not been disseized if he is unable to sell or mortgage. If one and the same examiner passed all titles in a given locality, the title which the examiner considered good as a practical matter would, of course, also be merchantable. But such is not the case, and the present examiner must anticipate that his client will in the future attempt to either sell or mortgage and that the same title will come under the scrutiny of some other examiner. In each of the decisions which an examiner has made in determining the validity of a title he has had to exercise sound legal and practical judgment. Will a second examiner, vested with the same wide discretion, reach the same conclusion? If his conclusion is different and he rejects the title, the professional reputation of the first examiner will be impaired and his client may suffer substantial financial loss. Faced with this uncertainty, many examiners have adopted a solution which emphasizes individual security rather than the general facility of land transfers. This is the practice known as "construing against title," or more picturesquely, as "flyspecking." These terms indicate that the examiner indulges in a minimum of presumptions of law and fact, demands full search of title in every instance, and places no reliance upon the statute of*

limitations. As a consequence he considers all errors of record as substantial. The result of even a **single examiner** in a community adopting this practice is to set up titles which are practically good in fact. Examiner **A** rejects a title on technical grounds. Thereafter, Examiner **B**, to whom the same problem is presented, feels compelled to reject any title presented to him which exhibits a similar defect. Examiner **A** is thereupon confirmed in the wisdom of his initial decision, and resolves to be even more strict in the future. It is sometimes said that the practice of construing against title reduces an entire bar to the standards of its most timorous member. This is an understatement, for the net effect is an extremity obtained only by mutual goading.

The consequences of construing against title are iniquitous, and the practice itself is ridiculous in that it is predicated upon a theoretical perfection unobtainable under our present system of record land titles. Many titles which are practically unassailable become unmarketable or the owners are put to expense and delay in rectifying formal defects. Examiners are subjected to much extra labor without commensurate compensation, and the transfer of land is retarded. As long as we tolerate periodic re-examination of the same series of non-conclusive records by different examiners, each vested with very wide discretion, there is no remedy for these difficulties. However, some of the most oppressive results may be avoided by the simple device of agreements made by examiners in advance as to the general standards which they will apply to all titles which they examine. Such agreements may extend to: (1) the duration of search; (2) the effect of lapse of time upon defects of record; (3) the presumptions of fact which will ordinarily be indulged in by the examiner; (4) the law applicable to particular situations; and (5) relations between examiners and between examiners and the public. Where agreements are made by title examiners within a particular local area having a single set of land records, such agreements may extend even further and may embrace the total effect of particular specific records. For example, it may be agreed that certain base titles are good and will not thereafter be examined or that specific legal proceedings, normally notorious foreclosures and receivership actions, will be conclusively deemed effective. Although such agreements may not be legally binding upon the courts, they may go far toward dispelling the fear that if one examiner waives an apparent defect of title it may be deemed a cloud upon the title by a subsequent examiner. The result is an increase in the marketability of land and a reduction of the labor imposed upon the proponent of the title. The obvious utility of such an arrangement has led to the adoption of uniform standards for the examination of titles by an increasing number of bar associations. (underlying added)

The problems resulting from this quest for perfect title can impact the examiner and his clients in several ways:

1. The legal fees charged to the public are higher because each examination for a parcel must always go back all the way to sovereignty;
2. The costs to cure minor defects are often relatively large compared to the risk being extinguished;

3. The unexpected costs to remedy problems already existing when the vendor came into title, which were waived by the vendor's attorney, are certainly not welcomed by the public; and
4. The prior examiner looks inept and/or the subsequent examiner looks unreasonable, when a preexisting defect is waived by one attorney and "caught" by the next.

(John C. Payne, "The Why, What and How of Uniform Title Standards", 7 Ala.L.Rev. 25 (1954) (herein "The Why of Standards"))).

In addition, friction and lowering of professional cooperation increase between the title examining members of the bar as they take shots at each other's work. This process of adopting an increasingly conservative and cautious approach to examination of titles creates a downward spiral. As noted in Bayse:

*Examiners themselves are human and will react in different ways to the same factual situation. Some are more conservative than others. Even though one examiner feels that a given irregularity will not affect the marketability of a title as a practical matter, he is hesitant to express his opinion of marketability when he knows that another examiner in the same community may have occasion to pass upon the title at a later time and would undoubtedly be more conservative and hold it to be unmarketable. Under these circumstances he is inclined to be more conservative himself and declare the title to be unmarketable. People do not like to be required to incur expense and effort to correct defects which do not in a practical sense jeopardize a title when they have already been advised that their title is marketable. The public becomes impatient with a system that permits such conservative attitudes.*

*If the same examiner passed judgment upon all title transactions, this situation would remain dormant. Unfortunately such is not the case. Or if all examiners would hold the same opinion as to specific irregularities in titles, this complication would not arise. But this also is not the case. The result in many communities has been greatly depressive, sometimes tragic. (underlining added) (Bayse: §7. Real Estate Standards)*

### **NEED FOR TITLE EXAMINATION STANDARDS**

The American system of conveying real property relies in large part not only on the recording system but also on the title examiner's standards for reviewing and then either approving or disapproving the quality of title reflected in the record. Such standards arise from several sources, depending on the local community and state's practices. [See Sweat, *Race, Race-Notice and Notice Statutes: The American Record System*, 3 Prob. & Prop. 27 (May/June 1989).]

In the absence of any officially recognized community or statewide standards, each examiner must individually interpret the applicable law and relevant facts according to the examiner's understanding of the risks involved. This decision-making is sometimes distorted

by the knowledge that another examiner-one who is perhaps "overly meticulous"-probably will be re-checking the title and the original examiner's work at a later date when another conveyance or loan is made.

To avoid the tendency toward rejecting almost every title (since there is seldom a perfect title), state bar organizations in about one-half of the states have adopted statewide standards, with several counties and cities adopting local standards as well. It is assumed that in states without statewide standards the standards vary from examiner to examiner.

Connecticut was the first state to adopt statewide standards, which were approved by its state bar association in 1938. Nebraska followed suit in 1939. Each set of statewide standards is adopted by each state's bar association, although Nebraska has followed the unique practice of having its standards adopted by the state legislature. Since 1938, 31 states have adopted standards, although 12 of these 31 states have allowed their standards to fall into disuse.

When title examination standards are drafted, it is usually from the standpoint of an examiner looking at an existing record, rather than from the perspective of a lawyer who is in the midst of preparing the necessary documents or pleading. An examiner who is limited to the current record is often forced to forget about what might be done if he or she "had it to do over again" instead of having to decide, "is it good enough as is?"

The issues typically faced by an examiner fall into three categories:

1. Issues on which there is no disagreement within the bar on the status of title because the law is both clear and well known;
2. Issues on which competent lawyers seriously disagree; or
3. Issues on which competent lawyers agree but on which novice examiners might be ignorant and on which overly meticulous examiners might disagree with the majority of examiners.

A set of standards can be the most efficient and effective if it addresses only the issues in category 3 ("grey areas"). A set of standards is unnecessary for the issues in category 1 ("no disagreement") and is subject to serious challenge if it ventures into topics falling under category 2 ("serious disagreement"). However, standards are often adopted to cover matters included under category 1 because those standards serve the useful educational purpose of discussing the law, from the unique viewpoint of a title examiner, even if only restating a statute or case holding.

After statewide standards were adopted in 23 states, the University of Michigan Law School and the Section undertook a joint effort to draft model standards. This project resulted in a set of model title standards by Lewis M. Simes and Clarence B. Taylor (1960 Model Title Standards Report). This set, which included 101 separate standards, contained 22 chapters covering such topics as the abstract, the examiner, name variances, marital interests, conveyances by and to trustees and mechanics liens.

This earlier report -- by Simes and Taylor -- was based on a review of all existing statewide standards and was predicated on the well-founded conclusion that many factors

affecting the marketability of title either cannot be determined from the record (such as proof of delivery, the competence of the grantor or the absence of forgery and fraud) or are only technical in nature, and do not expose the examiner's client to any real risk of a third party challenge to marketability of title (such as abbreviations of names). [**Note:** a copy of these Model Title Standards is available at [www.eppersonlaw.com](http://www.eppersonlaw.com)]

### III. STATES WITH TITLE EXAMINATION STANDARDS

The author of this article annually undertakes a survey of the 50 states to (1) identify which states have a current set of title examination standards, (2) to identify any additions or changes to existing standards, and (3) to identify the process for third parties to secure a copy of each state's set of standards.

The survey for 2007 is complete and there are 19 states with sets of standards which have been updated within the last 5 years (i.e., since 2002). In addition, there are 12 other states which have had, at some time, a set of standards which have been allowed to become outdated. Meaning there is a total of 31 states which have at some time had a set of standards.

The following is a chart showing the summary of this latest survey:



**THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE  
CENTER**

*(Effective July 31, 2007)*

**STATUS REPORT**

<u>State</u>	<u>Last Revised</u>		<u>Standards</u>		
	<u>Pre-2002</u>	<u>2002+</u>	<u>#Ch.</u>	<u>#Stand.</u>	<u>#Pgs.</u>
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 <sup>1</sup>	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
<b>Total</b>				<b>12</b>	<b>19</b>

<sup>1</sup>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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#### IV. TITLE EXAMINATION STANDARDS DEALING WITH MARKETABLE TITLE

Several of those states that adopt standards have ones that define “marketable title” and provide citations to local cases supporting such definition, and also have ones that discuss the application of their state’s curative acts to establish “marketable record title”, usually based on the Uniform Marketable Title Act.

Legislation based on the Uniform Marketable Title Act has been adopted in Connecticut, Florida, Indiana, Iowa, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Utah, and Vermont.

The following represent samples of the language describing marketable title in general in the standards from several states:

**COLORADO** Standard 1.1.2 provides:

*Title Standards 1.1.2 through 1.1.6 deal with the standards and duties of an examining attorney who is asked to render a written opinion as to the marketability of title to a particular parcel of property. The examining attorney determines title to such real property from a search of recorded documents affecting title to such real property from the date of the original source of title to the date of search and from a search of certain matters not of record, which also affect title to such real property. The search for the recorded documents which affect title to such real property may be made either from a personal examination by the examining attorney of the real property records of the county in which such real property is located (See Title Standard 1.1.3) or from an examination of the abstract of title which purports to contain such recorded documents (See Title Standard 1.1.4). The examining attorney has no obligation to question the accuracy or completeness of the real property records of the county or the abstract of title unless circumstances come to the attention of the examining attorney to put him or her upon inquiry. In examining the recorded documents which affect title to such real property revealed by either a search of the real property records or an abstract of title, the examining attorney is entitled to rely upon certain presumptions with respect to such documents (See Title Standard 1.1.6) unless circumstances come to the attention of the examining attorney to put him or her upon inquiry. The search for matters not of record which affect title to such real property may be made by a personal investigation of these matters by the examining attorney, but more frequently, such matters are excepted from the scope of the examining attorney's title opinion (See Title Standard 1.1.5). After conducting the requisite searches, the examining attorney prepares a written opinion as to the marketability of title to such real property based upon such searches and subject to commentary by the examining attorney as to the matters revealed by such searches and the limitations (if any) of such searches.*

**OHIO** Standard 1.1 provides:

**1.1 GENERAL RULES-MARKETABILITY**

*Problem A:*

*What is the general rule as to marketability?*

*Standard A:*

*A marketable title is one which a purchaser would be compelled to accept in a suit for specific performance.*

*Objections to a title should not be made by an attorney when the irregularities or defects do not impair the title or cannot reasonably be expected to expose the client to the hazard of adverse claims, litigation or expense in clearing the title.*

*Comment A: The Supreme Court states the following in the syllabus of McCarty v. Lingham, 111 Ohio St. 551, 146 N.E. 64 (1924): "A marketable title imports such ownership as insures to the owner the peaceable enjoyment and control of the land as against all others."*

*Comment B: See R.C. Secs. 5301.47, et seq. (Effective November 1, 1952; Comment B added May 20, 1965)*

**OKLAHOMA** Standard 1.1 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.*

*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. Stem, 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.*

*History: Adopted as II, November 16, 1946, 17 O.B.A.I. 1729 (1946), printed, id. at 1751-1752; became 1 on renumbering in 1948, 19 O.B.A.I. 223 (1948), at which time the Leedy case was added to the cited authority. On November 30, 1960, the last five cases cited were added, 1960 Proceedings of the Annual Meeting of the Oklahoma Bar Association at 20. Cross reference added, December 2, 1965. Resolution No.2, 1965 Real Property Committee, 36 O.B.A.I. 2094 (1965), id. at 2182. Approved*

by Real Property Section and adopted by House of Delegates, 37 O.B.A.I. 437 (1966).

*The 1995 Report of the Title Examination Standards Committee recommended amending this standard to better reflect the corpus of the law defining "marketable title." 66 O.B.I. 3256-57 (10/21/95). The Real Property Section approved the Committee's recommendation on November 9, 1995; the House of Delegates adopted the amendment on November 10, 1995, 66 O.B.I. 3751 (1995).*

**TEXAS** Standard 2.10 provides:

*All title examinations should be based on marketability of title. A marketable title is one that is free from reasonable doubt such that a prudent person, with knowledge of all salient facts and circumstances and their legal significance, would be willing to accept it. To be marketable, a title need not be absolutely free from every possible suspicion. The mere possibility of a defect that has no probable basis does not show an unmarketable title.*

**Comment:** *Except as otherwise provided in these standards, if a title examination reveals the need to rely on facts outside of the record, the title is unmarketable. An example would be facts that must be proven by parol evidence or by presumptions of fact that would probably, in the event of suit, become genuine issues of fact. Whether the potential lawsuit would likely be won by the party with apparent record title is immaterial, because threat or probable likelihood of litigation renders the title unmarketable. On the other hand, a title need not be perfect to be marketable. A doubt about title must be a reasonable doubt and be serious enough to affect its value.*

*Usually, the buyer's attorney examines the title and identifies any title defects. If the examiner prepares a written opinion, any title defects will be listed together with a statement of the necessary requirement(s) to cure each defect. The opinion may also contain comments about the title that are intended to inform the buyer of any concerns about the title that do not affect marketability. Usually in response, the seller's attorney or other agent obtains the curative instruments or takes other necessary action to cure any title defects. Such curative efforts are usually submitted to the buyer's attorney for approval prior to closing. If a title defect cannot be cured prior to closing, the buyer must decide whether to accept the defective title or rescind the transaction.*

**Caution:** *Matters that may make a title unmarketable include:*

*(1) Land acquired by limitation title, Greer v. International Stock Yards Co., 43 Tex.Civ.App. 370,96 S.W. 79 (Tex.Civ.App. 1906, writ ref'd).*

*(2) Land acquired by accretion, Gaines v. Dillard, 545 S.W.2d 845 (Tex.Civ.App.-Fort Worth 1976, writ ref'd n.r.e.).*

(3) Title that is subject to an outstanding oil and gas lease, *Roberts & Corley v. McFaddin, Weiss & Kyle*, 74 S.W. 105 (Tex.Civ.App.1903, writ denied).

(4) Title that is subject to an outstanding royalty interest, *Sweet v. Berry*, 236 S.W. 531 (Tex.Civ. App.-Amarillo 1921, writ dismiss'd).

(5) Title that is subject to an outstanding covenant, *Dupree v. Savage*, 154 S.W. 701 (Tex.Civ.App.-Amarillo 1913, writ refused).

(6) Title that is subject to an outstanding easement, *Shaw v. Morrison*, 14 S.W.2d 95-1 (Tex.Civ.App.- Eastland 1929, no writ).

(7) Title that is subject to a mortgage, judgment lien, or tax lien, *Crutcher v. Aiken*, 252 S.W. 844 (Tex.Civ.App.-El Paso 1923, no writ).

**Source:**

*Lund v. Emerson*, 204 S.W.2d 639 (Tex.Civ.App.-Amarillo 1947, no writ).

*Owens v. Jackson*, 35 S.W.2d 186 (Tex.Civ.App.-Austin 1931, writ dismiss'd w.o.j.).

*Texas Auto Co. v. Arbetter*, 1 S.W.2d 334 (Tex.Civ.App.-San Antonio 1927, writ dismiss'd w.o.j.). *Austin v. Carter*, 296 S.W. 649 (Tex.Civ.App.-Eastland 1927, writ dismiss'd).

*Alling v. Vander Stucken*, 194 S.W. 443 (Tex.Civ.App.-San Antonio 1917, writ refused). *Adkins v. Gillespie*, 189 S.W. 275 (Tex.Civ.App.-Dallas 1916, no writ).

3 *Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination* § 315 n. 1 (Texas Practice 2d ed. 1992).

**History:**

Adopted, June 27, 1997.

**VERMONT** Standard 1.3 provides:

**VERMONT TITLE STANDARDS**

**CHAPTER I**

**THE TITLE EXAMINER**

**STANDARD 1.3**

\*\*\*\*\*

*History:*

*Adopted 3/21/96*

**DEFINITION OF MARKETABLE TITLE**

*A marketable title is one that may be freely made the subject of resale. Krulee v. Huyck & Sons, 121 VT 304 (1959) A marketable title is one that allows an owner to hold the land free from the probable claim of another: It is a title which would allow the holder of the land if he or she wanted to sell, to transfer a title which is reasonably free from doubt. A title is marketable when its validity cannot be said to involve a question of fact and is good as a matter of law. First National Bank v. Laperle, 117 VT 144, 157 (1952).*

The Uniform Marketable Title Act usually allows a title examiner to restrict the examiner's review to a certain time frame (e.g., back 30 or 40 years from the current date), rather than requiring a complete exam back to the conveyance out of the sovereign (usually a patent).

The following, by way of example, is the operative language of the Oklahoma standards (i.e., 30.1, 30.2, 30.3 and 30.4) implementing that state's version of the Marketable Record Title Act:

**30.1 REMEDIAL EFFECT**

*The Marketable Record Title Act is remedial in character and should be relied upon as a cure or remedy for such imperfections of title as fall within its scope.*

**30.2 REQUISITED OF MARKETABLE RECORD TITLE**

*A Marketable Record Title under the Marketable Record Title Act exists only where*

- (1) a person has an unbroken chain of title of record extending back at least thirty (30) years; and*
- (2) nothing appears of record purporting to divest such person of title*

*Note: See next two standards for a further statement regarding these two requirements.*

**30.3 UNBROKEN CHAIN OF TITLE OF RECORD**

*"An unbroken chain of title of record", within the meaning of the Marketable Record Title Act, may consist of (1) A single conveyance or other title transaction which purports to create an interest and which has been a matter of public record for at least thirty (30) years; of (2) A connected series of conveyances or other title transaction of public record for at least thirty (30) years.*

**30.4 MATTERS PURPORTING TO DIVEST**

*Matters "purporting to divest" within the meaning of the Marketable Record Title Act are those matters appearing of record which, if taken at face value, warrant the inference that the interest has been divested.*

## V. TITLE STANDARDS TOPICS IN STATES WITH CURRENT STANDARDS

As a resource to be able to know whether another state has a standard on a particular topic, the author undertook an analysis this summer whereby the topical chapters were studied for all those states with current standards (i.e., updated in the last 5 years). A comprehensive list of all possible topics was developed and then every state's sets of standards were matched with those topics, so that a chart was prepared showing the number for each state's chapter which matched the master list.

The following is that chart:

## 2007 State-by-State Comparison of Title Examination Standards

<u>Ch #</u>	<u>Topic</u>	<u>CO</u>	<u>CT</u>	<u>FL</u>	<u>GA</u>	<u>IA</u>	<u>KS</u>	<u>ME</u>	<u>MA*</u>	<u>MI</u>	<u>MN*</u>	<u>NE</u>	<u>ND</u>	<u>OH</u>	<u>OK</u>	<u>RI</u>	<u>SD</u>	<u>TX</u>	<u>VT</u>
<b>Total Number of Title Standards Chapters</b>		<b>15</b>	<b>28</b>	<b>21</b>	<b>39</b>	<b>15</b>	<b>23</b>	<b>9</b>	<b>71</b>	<b>28</b>	<b>105</b>	<b>16</b>	<b>18</b>	<b>10</b>	<b>23</b>	<b>14</b>	<b>20</b>	<b>15</b>	<b>17</b>
<i>(From Michigan Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
1	The Marketable Record Title Act	--	3	17	2	11	23	--	--	1	--	--	18	8	30	--	23	--	--
2	Names	6, 9	8	10	3	8	10	4	--	2	1-6	8	10	--	5	4	--	3	8
3	Execution, Acknowledgment and Recording of Conveyances	--	9, 11	--	4	--	5	--	16, 46	3	44, 67	13	5, 6	9	6	3	--	4	9
4	Dower	--	--	--	--	--	--	--	--	4	--	--	--	--	--	--	--	--	--
5	Homestead	14	--	18	--	--	--	--	--	5	--	--	--	--	--	--	5	--	--
6	Joint Tenancy and Tenancy by the Entireties	7	--	6	--	--	12	4	--	6	20-21, 62, 66	--	4	--	8	--	4	--	--
7	Conveyances by Estate Fiduciaries and Title Derived from Estates of Decedents	--	--	--	--	--	6, 21	--	--	7	--	--	--	--	17	9	--	11	--
8	Conveyances by and to Trustees	13	15	--	29	--	--	--	23, 33, 45, 68	8	48, 106	--	--	--	15	--	--	9	--
9	Future Interests	--	--	--	--	--	--	--	--	9	--	--	--	--	--	--	--	--	--
10	Corporate Conveyances	--	20	4	9	3	4	--	11	10	59	--	--	--	12	5	4	6	--
11	Partnership Conveyances	--	21	19	--	12	--	--	--	11	--	--	13	--	13	6	4	7	--
12	Land Contracts	--	--	--	--	--	--	--	--	12	--	--	11	--	--	--	--	--	--



13	Recorded Plats	--	--	11	--	--	--	--	--	13	64	--	14	--	--	--	19	--	--
14	Easements	--	--	--	--	--	--	--	--	14	--	--	7	--	--	--	--	--	--
15	Mineral Interests	--	--	--	22	--	16	--	--	15	--	15	17	--	--	--	8	--	--
16	Mortgages and Mortgage Foreclosures	--	19	9	--	7	15	6	25, 42, 48, 56, 58, 65	16	36, 58, 99, 103, 104	7	8	--	24	7	14	--	--
17	Construction Liens	--	--	--	--	--	--	--	--	17	--	--	--	--	--	--	--	--	--
18	Writs of Attachment	--	--	--	--	--	--	--	--	18	--	--	--	--	--	--	--	--	--
19	Executions	--	--	--	--	--	--	--	47	19	--	--	--	--	--	--	--	--	--
20	Federal Tax Liens	--	24	12	31	--	--	--	3, 54	20	82	--	--	--	25	--	--	--	23
21	State Tax Liens	--	23	12	--	--	--	--	55	21	--	--	--	--	25	14	--	--	27
22	Tax Titles	--	--	15	--	--	--	--	4	22	45	--	--	--	--	12	26	--	--
23	Descriptions	8	10	21	5	--	--	5	27	23	--	--	--	--	--	--	--	5	--
24	Title to Submerged Lands	--	--	--	--	--	--	5	--	24	--	--	--	--	--	--	--	--	--
25	Profit à Prendre	--	--	--	--	--	--	--	--	25	--	--	--	--	--	--	--	--	--
26	Bankruptcy	--	27	2	21	13	--	--	30-32	26	35, 83	12	16	--	34	--	12	12	--
27	Leases	--	--	7	--	--	--	--	43	27	28	--	--	--	--	--	3	--	--
28	Condominiums	--	--	--	19	14	--	--	70	28	94-96	--	15	10	--	--	--	--	--
<i>(From Colorado Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
1	Title Examination: Generally	1	1, 2	--	1, 24	--	3	1	1	--	--	--	--	2	1	1, 2	A	1	1, 2
2	Actions and Proceedings (Including Lis Pendens)	2	5, 19	--	16	--	--	--	29, 67	--	42	--	--	7	--	--	6	15	--

3	Conveyancing --general	3	--	3	--	--	--	--	--	--	78, 87, 89	4	--	3	18	--	--	--	13, 14
4	Conveyancing from Public Officials	4	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
5	Capacity to Convey	5	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	10	--
10	Releases	10	18	--	--	--	--	--	28	--	18	--	--	--	--	--	--	--	--
11	Descendents' Estates	11	13	5	13	--	--	--	--	--	--	9	--	--	--	--	--	--	--
12	Conservatorship Proceedings	12	--	--	--	--	9	--	--	--	--	--	--	--	--	--	--	--	--
15	Soldiers' and Sailors' Civil Relief Act of 1940	15	--	14	--	--	22	--	6-8	--	74	--	--	--	35	--	--	--	--
<i>(From Connecticut Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
4	The Alteration and Correction of Recorded Documents	--	4	--	--	--	--	--	--	--	--	--	--	--	--	--	7	--	--
6	Grantors	--	6	--	--	--	--	--	--	--	--	--	2	--	--	--	--	--	6
7	Grantees	--	7	--	--	--	--	--	--	--	--	--	2	--	--	--	--	--	7
14	Co-Tenancies	--	14	--	7	--	--	--	--	--	--	--	--	--	--	11	--	--	--
16	Attachments and Judgment Liens	--	16	--	--	--	--	--	38	--	47	--	--	--	--	--	--	--	--
17	Mechanic's Liens	--	17	8	15	--	13	--	--	--	--	--	--	--	--	--	13	--	--
22	Conveyances to and from Limited Liability Companies	--	22	--	12	15	4	4	59	--	--	--	--	--	14	--	5	--	22
25	The Federal Special Estate Tax Lien	--	25	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	24
26	The Federal Gift Tax Lien	--	26	--	--	--	--	--	--	--	69	--	--	--	25	--	--	--	25
28	Marketability of Title of Interests in Real Property Transferred from Failed Financial Institutions	--	28	--	--	--	--	--	--	--	--	--	--	--	16	--	--	--	28
<i>(From Florida Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

1	Agency and Powers of Attorney	--	--	1	--	--	--	--	34, 48	--	109	16	--	--	--	--	5	8	6
9	Judgments and Mortgages	--	--	9	--	--	--	--	--	--	--	--	9	--	--	--	4	--	--
13	Trusts	--	--	13	8	--	--	4	9, 53	--	--	14	--	--	15	--	--	--	--
16	Recording, Notice, and Priorities	--	--	16	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
20	Marital Property	--	--	20	27	5	--	8	--	--	--	5	--	--	7	10	5	14	6
<i>(From Georgia Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
6	Affidavits and Recitals	--	--	--	6	--	2	--	--	--	22	13	--	--	--	8	7	13	--
10	Limited Partnerships	--	--	--	10	--	--	--	26, 37, 60	--	79	--	--	--	--	--	--	--	--
11	General Partnerships	--	--	--	11	--	--	--	44	--	--	--	--	--	--	--	--	--	--
14	Deeds to Secure Debt (Security Deeds)	--	--	--	14	--	--	--	--	--	--	--	--	--	--	--	--	--	--
15	Mechanics' and Materialmen's Liens	--	--	--	15	--	--	--	62-64	--	--	--	--	--	--	--	13	--	--
17	Foreclosures	--	--	--	17	--	--	--	35	--	--	--	--	--	--	--	--	16	--
18	Transactions Under Federal Truth-in-Lending and Regulation Z	--	--	--	18	--	--	--	--	--	--	--	--	--	--	--	--	--	--
20	Memorandum of Lease or Contract	--	--	--	20	--	--	--	--	--	--	--	--	--	--	--	--	--	--
23	Land Registration Proceedings	--	--	--	23	--	--	--	--	--	--	--	--	--	--	--	--	--	--
25	Environmental Issues	--	--	--	25	--	--	--	--	--	--	--	--	--	--	--	--	--	--
26	Surveys	--	--	--	26	--	--	5	--	--	--	--	--	--	--	--	--	--	--
28	Real Property Forfeiture	--	--	--	28	--	--	--	--	--	--	--	--	--	--	--	--	--	--
30	Assessments for Governmental Improvements and Services	--	--	--	30	--	--	--	--	--	--	--	--	--	--	--	--	--	--
32	Commercial Real Estate	--	--	--	32	--	--	--	--	--	--	--	--	--	--	--	--	--	--

	<b>Brokers' Liens</b>																		
33	RTC Title Issues	--	--	--	33	--	--	--	--	--	--	--	--	--	--	--	--	--	--
34	Zoning	--	--	--	34	--	--	--	--	--	--	--	--	--	--	--	--	--	--
35	Federal Statutes Which Do Not Affect Title	--	--	--	35	--	--	--	--	--	--	--	--	--	--	--	--	--	--
36	State (Georgia) Statutes Which Do Not Affect Title	--	--	--	36	--	--	--	--	--	--	--	--	--	--	--	--	--	--
37	Condemnations--The Right of Eminent Domain	--	--	--	37	--	--	--	--	--	--	--	--	--	--	--	--	--	--
38	Easement Title Issues	--	--	--	38	--	--	--	--	--	--	--	--	--	--	--	--	--	--
39	Quiet Title Actions	--	--	--	39	--	--	--	--	--	--	--	--	--	--	--	--	--	--
<i>(From Iowa Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
1	Abstracts	--	--	--	--	1	--	2	--	--	--	1	--	--	2	--	--	--	--
2	Political Subdivisions	--	--	--	--	2	--	--	--	--	--	--	--	--	--	--	--	--	--
3	Deeds and Contracts	--	--	--	--	3	--	--	--	--	14-17	--	--	--	--	--	2, 7	--	--
6	Judicial Proceedings	--	--	--	--	6	--	--	--	--	--	6	--	--	--	--	--	--	--
9	Probate	--	--	--	--	9	18	7	14, 36	--	39	--	12	5	--	--	15	--	--
10	Statutes of Limitations and Marketable Title Legislation	--	--	--	--	10	--	--	--	--	--	10, 11	--	--	--	--	--	2	--
<i>(From Kansas Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
6	Deeds from Fiduciaries and Minors	--	--	--	--	--	6	--	--	--	--	--	--	--	--	--	--	--	--
7	Deeds--County Clerk Tax Deeds or Judicial Tax Foreclosure	--	--	--	--	--	7	--	--	--	--	--	--	--	--	--	--	--	--
8	Divorces and Domestic Judgments	--	--	--	--	--	8	--	--	--	--	--	--	--	--	--	--	--	--
9	Guardianship or	--	--	--	--	--	9	--	--	--	--	--	--	--	--	--	--	--	--

	Conservatorship																			
11	State Inheritance and Federal Estate Taxes	--	--	--	--	--	11	--	13	--	--	--	--	--	--	--	--	--	--	--
13	Judgments and Mechanics' Liens	--	--	--	--	--	13	--	--	--	--	--	--	--	--	--	--	--	--	--
14	Marital Status	--	--	--	--	--	14	--	--	--	8-12, 44, 65	--	--	--	--	--	--	--	--	--
17	Partition	--	--	--	--	--	17	--	15	--	--	--	--	--	--	--	--	--	--	--
19	Probate Proceedings (cont.)-- Determination of Descent	--	--	--	--	--	19	--	--	--	--	--	--	--	--	--	--	--	--	--
20	Rights of Way, Abandonment and Vacation	--	--	--	--	--	20	--	--	--	--	--	--	--	--	--	--	--	--	--
<i>(From Maine Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
3	Instruments	--	--	--	--	--	--	3	--	--	37	--	--	--	3	--	--	--	--	--
9	Municipal Taxation	--	--	--	--	--	--	9	--	--	--	--	--	--	--	--	--	--	--	--
<i>(From Massachusetts Title Standards)*</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
2	Old Age Assistance Liens	--	--	--	--	--	--	--	2	--	--	--	--	--	--	--	--	--	--	--
5	Water Liens	--	--	--	--	--	--	--	5	--	--	--	--	--	--	--	--	--	--	--
10	Executor's Power of Sale	--	--	--	--	--	--	--	10	--	--	--	--	--	--	--	--	--	--	--
12	Foreign Transfers	--	--	--	--	--	--	--	12	--	--	--	--	--	--	--	--	--	--	--
17	Corporate Tax Liens	--	--	--	--	--	--	--	17	--	--	--	--	--	--	--	--	--	--	--
18	Municipal Liens	--	--	--	--	--	--	--	18	--	--	--	--	--	--	--	--	--	--	--
19	Municipal Lien Certificates	--	--	--	--	--	--	--	19	--	--	--	--	--	--	--	--	--	--	--
20	Lev of Execution of Sale	--	--	--	--	--	--	--	20	--	--	--	--	--	--	--	--	--	--	--
21	Scriveners' Errors	--	--	--	--	--	--	--	21	--	--	--	--	--	--	--	--	--	--	--
22	Municipal Betterments	--	--	--	--	--	--	--	22	--	--	--	--	--	--	--	--	--	--	--

24	State (Massachusetts) Estate Tax Liens	--	--	--	--	--	--	--	24	--	--	--	--	--	--	--	--	--	--
39	Exercise of Power of Appointment	--	--	--	--	--	--	--	39	--	--	--	--	--	--	--	--	--	--
40	Transfers by Devisees	--	--	--	--	--	--	--	40	--	--	--	--	--	--	--	--	--	--
41	List of Heirs	--	--	--	--	--	--	--	41	--	--	--	--	--	--	--	--	--	--
49	Dissolution of Attachments	--	--	--	--	--	--	--	49	--	--	--	--	--	--	--	--	--	--
50	Pretermitted Issue	--	--	--	--	--	--	--	50	--	--	--	--	--	--	--	--	--	--
51	Transfers Involving the Commonwealth	--	--	--	--	--	--	--	51	--	--	--	--	--	--	--	--	--	--
52	Extensions of Restrictions	--	--	--	--	--	--	--	52	--	--	--	--	--	--	--	--	--	--
57	Private Restrictions	--	--	--	--	--	--	--	57	--	--	--	--	--	--	--	--	--	--
61	State (Massachusetts) Estate Tax Liens with Respect to Transfers	--	--	--	--	--	--	--	61	--	--	--	--	--	--	--	--	--	--
66	Transfers by Non-Profit Corporations	--	--	--	--	--	--	--	66	--	--	--	--	--	--	--	--	--	--
69	Certificates Pursuant to M.G.L. c. 183A, § 6(d)	--	--	--	--	--	--	--	69	--	--	--	--	--	--	--	--	--	--
71	Evidence of Death of Deceased Joint Owners and Life Tenants	--	--	--	--	--	--	--	71	--	--	--	--	--	--	--	--	--	--
<i>(From Minnesota Title Standards)*</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
7	Non-Joiner of Spouse	--	--	--	--	--	--	--	--	7	--	--	--	--	--	--	--	--	--
13, 110	Patents	--	--	--	--	--	--	--	--	13, 110	--	--	--	--	--	--	--	--	--
19	Expired Forfeiture Provisions	--	--	--	--	--	--	--	--	19	--	--	--	--	--	--	--	--	--
22	Affidavits and Recitals	--	--	--	--	--	--	--	--	22	--	--	--	--	--	--	--	--	--
23	Wills	--	--	--	--	--	--	--	--	23	--	--	--	--	--	--	--	--	--
24	Decree of Distribution	--	--	--	--	--	--	--	--	24	--	--	--	--	--	--	--	--	--

26, 76	Contract for Deed	--	--	--	--	--	--	--	--	--	26, 76	--	--	--	--	--	--	--	--
27	Cancellation of a Contract	--	--	--	--	--	--	--	--	--	27	--	--	--	--	--	--	--	--
31	Taxpayer Identity	--	--	--	--	--	--	--	--	--	31	--	--	--	--	--	--	--	--
33	Articles of Incorporation	--	--	--	--	--	--	--	--	--	33	--	--	--	--	--	--	--	--
33a	Conveyances From Religious Corporation	--	--	--	--	--	--	--	--	--	33a	--	--	--	--	--	--	--	--
34	Deed by Owner of Fee and Mortgage	--	--	--	--	--	--	--	--	--	34	--	--	--	--	--	--	--	--
38	Foreclosure Advertisement Irregularities	--	--	--	--	--	--	--	--	--	38	--	--	--	--	--	--	--	--
41	Satisfaction of Mortgagees or Assignees	--	--	--	--	--	--	--	--	--	41	--	--	--	--	--	--	--	--
43	Date Variances	--	--	--	--	--	--	--	--	--	43	--	--	--	--	--	--	--	--
46	Tax Sales	--	--	--	--	--	--	--	--	--	46	--	--	--	--	--	--	--	--
49	Omission of Notarial Expiration Date	--	--	--	--	--	--	--	--	--	49	--	--	--	--	--	--	--	--
50	Judgments in Mechanic's Lien and Mortgage Foreclosures	--	--	--	--	--	--	--	--	--	50	--	--	--	--	--	--	--	--
51	Marriage of a Minor	--	--	--	--	--	--	--	--	--	51	--	--	--	--	--	--	--	--
52	Contract for Deed to Individual Grantee	--	--	--	--	--	--	--	--	--	52	--	--	--	--	--	--	--	--
53	Conduit Deeds	--	--	--	--	--	--	--	--	--	53	--	--	--	--	--	--	--	--
55	Abstract-Reports of Powers of Sale	--	--	--	--	--	--	--	--	--	55	--	--	--	--	--	--	--	--
56	Judgment Quieting Title	--	--	--	--	--	--	--	--	--	56	--	--	--	--	--	--	--	--
57	Vacated Streets and Alleys	--	--	--	--	--	--	--	--	--	57	--	--	--	--	--	--	--	--
60	Amended 50 Year Standard	--	--	--	--	--	--	--	--	--	60	--	--	--	--	--	--	--	--
61	40 Year Standard	--	--	--	--	--	--	--	--	--	61	--	--	--	--	--	--	--	--

63	Corporate Seal--Effect of Improper Form	--	--	--	--	--	--	--	--	--	63	--	--	--	--	--	--	--	--
68	Racial Restrictions	--	--	--	--	--	--	--	--	--	68	--	--	--	--	--	--	--	--
69	Gift and Death Tax Liens	--	--	--	--	--	--	--	--	--	69	--	--	--	--	--	--	--	--
71	Publication in Title Action	--	--	--	--	--	--	--	--	--	71	--	--	--	--	--	--	--	--
72	Sale Contract, Effect on Joint Tenancy	--	--	--	--	--	--	--	--	--	72	--	--	--	--	--	--	--	--
77	Stranger Appearing in Notice of Mechanic's Lien	--	--	--	--	--	--	--	--	--	77	--	--	--	--	--	--	--	--
81	Effect of Certain Joinders in Plats and Declarations	--	--	--	--	--	--	--	--	--	81	--	--	--	--	--	--	--	--
82	Required Searches	--	--	--	--	--	--	--	--	--	82	--	--	--	--	--	--	--	--
84	Disposition of Respondent's Interest in Real Property	--	--	--	--	--	--	--	--	--	84	--	--	--	--	--	--	--	--
84a, 92	Decrees of Divorce or Dissolution of Marriage	--	--	--	--	--	--	--	--	--	84a, 92	--	--	--	--	--	--	--	--
85	Non-Identity of Tax Lien	--	--	--	--	--	--	--	--	--	85	--	--	--	--	--	--	--	--
86	Constructive Notice	--	--	--	--	--	--	--	--	--	86	--	--	--	--	--	--	--	--
88	Townhouses	--	--	--	--	--	--	--	--	--	88	--	--	--	--	--	--	--	--
90	Judgment and Tax Liens Against Contract Vendors	--	--	--	--	--	--	--	--	--	90	--	--	--	--	--	--	--	--
91	Recital of Restrictions	--	--	--	--	--	--	--	--	--	91	--	--	--	--	--	--	--	--
91a	Validity of Covenants	--	--	--	--	--	--	--	--	--	91a	--	--	--	--	--	--	--	--
97	Dimension of Auditor's Subdivision Lot	--	--	--	--	--	--	--	--	--	97	--	--	--	--	--	--	--	--
98	Stay Instructions	--	--	--	--	--	--	--	--	--	98	--	--	--	--	--	--	--	--
100	Alien's, Interest in Land	--	--	--	--	--	--	--	--	--	100	--	--	--	--	--	--	--	--
105	Cancellation of a Contract for Deed	--	--	--	--	--	--	--	--	--	105	--	--	--	--	--	--	--	--



107	Attorney's Liens	--	--	--	--	--	--	--	--	--	107	--	--	--	--	--	--	--	--
108	Payment of Mortgage Registration	--	--	--	--	--	--	--	--	--	108	--	--	--	--	--	--	--	--
111	Conveyances to Attorneys-In-Fact for Gifts	--	--	--	--	--	--	--	--	--	111	--	--	--	--	--	--	--	--
112	Conveyances by a Minor's Guardian	--	--	--	--	--	--	--	--	--	112	--	--	--	--	--	--	--	--
113	Mortgage Satisfaction	--	--	--	--	--	--	--	--	--	113	--	--	--	--	--	--	--	--
114	Probate Liens	--	--	--	--	--	--	--	--	--	114	--	--	--	--	--	--	--	--
<i>(From Nebraska Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
2	Subdivisions and Zoning	--	--	--	--	--	--	--	--	--	--	2	--	--	--	--	--	--	--
3	Entities	--	--	--	--	--	--	--	--	--	--	3	--	--	--	--	--	--	--
<i>(From North Dakota Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
1	Source of Title and Title Transfers	--	--	--	--	--	--	--	--	--	--	--	1	--	--	--	--	--	--
<i>(From Ohio Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
1	Reference to Title Standards in Contracts for Sale or Purchase of Land	--	--	--	--	--	--	--	--	--	--	--	--	1	--	--	--	--	--
4	Encumbrances	--	--	--	--	--	--	--	--	--	--	--	--	4	--	--	--	--	--
6	Process-Service	--	--	--	--	--	--	--	--	--	--	--	--	6	--	--	--	--	--
<i>(From Oklahoma Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
23	Judgments, Execution, and Attachment	--	--	--	--	--	--	--	--	--	--	--	--	--	23	--	--	--	--
29	Simplification of Land Titles Act	--	--	--	--	--	--	--	--	--	--	--	--	--	29	--	--	--	--
31	Federal Nonjudicial Mortgage Foreclosure	--	--	--	--	--	--	--	--	--	--	--	--	--	31	--	--	--	--
<i>(From South Dakota Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
1	Tribal Lands	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	1	--
6	Delivery	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	6	--

9	Water Issues	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	9	--	--
10	Covenants	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	10	--	--
11	Liens--general	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	11	--	--
16	Errors or Omissions of Dates	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	16	--	--
<i>(From Texas Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
7	Conveyances Involving Partnerships, Joint Ventures, and Un-Incorporated Associations	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	7	--
<i>(From Vermont Title Standards)</i>		--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--
4	Limitations on the Use by Grantor of Corrective Deeds	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	4
20	Presumptions Applicable to Corporate Conveyances	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	20
23	Federal General Tax Lien	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	23

In addition, as part of the author's annual survey current instructions on how to obtain a copy of the standards from each of the states is updated. Such information is available on the author's website (i.e., [www.eppersonlaw.com](http://www.eppersonlaw.com)), and the most recent version of such information is provided below:

THE NATIONAL TITLE EXAMINATION  
STANDARDS RESOURCE CENTER

**ANNUAL HANDBOOK**  
*(Effective July 31, 2007)*

**ORDERING INFORMATION**

(Only those states that have ever had title standards are listed.)

State	Ordering Information	Online Ordering/ Downloading Information	For More Information, Please Contact the Following	Cost
AR	Attn: Randall Hicks Arkansas Bar Association 400 West Markham Little Rock, AR 72201 Phone: (501) 375-4606 Fax: (501) 375-4901	Online Order Form: <a href="http://www.arkbar.com">www.arkbar.com</a> (Select "Publications" from the left menu, select "Practice Handbooks", find the "Standards for Examination of Real Estate Titles in Arkansas" publication)	Randall Hicks Arkansas Bar Association 400 West Markham Little Rock, AR 72201 Phone: (501) 375-4606 Fax: (501) 375-4901	Member: \$15.00 + S.H.  Non-Member: \$25.00 + S.H.
CO	Diane B. Davies Phone: (303) 607-3658 E-mail: <a href="mailto:Ddavies@faegre.com">Ddavies@faegre.com</a>	N/A	Diane B. Davies Phone: (303) 607-3658 E-mail: <a href="mailto:Ddavies@faegre.com">Ddavies@faegre.com</a>	Free

State	Ordering Information	Online Ordering/ Downloading Information	For More Information, Please Contact the Following	Cost
<b>CT</b>	Stewart Bohan 255 Acorn Drive Middletown, CT 06457 Phone: (860) 257-0606 Fax: (860) 347-5197 Email: <a href="mailto:lsbohan@aol.com">lsbohan@aol.com</a>	Members: <a href="http://www.ctbar.org">www.ctbar.org</a> (Enter member's area)  Non-Members: Online Order Form: <a href="http://www.ctbar.org">www.ctbar.org</a> (Select "CLE & Publications" from the left menu, select "Real Property" from the dropdown menu at center and choose "Submit", select "Publications", select "Connecticut Standards of Title – Including the 2001 and 2002 Supplements")	Denis Caron Phone: (860) 635-5566	Full - \$250.00 Supplements - \$30.00
<b>FL</b>	N/A	Go to <a href="http://www.FlaBarRrpptl.org">www.FlaBarRrpptl.org</a> to obtain a free copy of the standards.	Pat Jones Phone: 1-800-432-9594	Free at: <a href="http://www.FlaBarRrpptl.org">www.FlaBarRrpptl.org</a> .
<b>GA</b>	N/A	Go to <a href="http://www.garealpropertylaw.com">www.garealpropertylaw.com</a> to obtain a free copy of the standards.	Leon Adams One Atlantic Center 1201 West Peachtree St. Atlanta, GA 30309-3424 Phone: (404) 881-7382 Fax: (404) 253-8470 Email: <a href="mailto:Ladams@Alston.com">Ladams@Alston.com</a>	Free at: <a href="http://www.garealpropertylaw.com">www.garealpropertylaw.com</a> .
<b>ID</b>	These standards are too old and can no longer be ordered.			
<b>IL</b>	These standards are too old and can no			

State	Ordering Information	Online Ordering/ Downloading Information	For More Information, Please Contact the Following	Cost
	longer be ordered.			
<b>IA</b>	Contact Barb Lefleur at the Iowa State Bar Association. Phone: (515) 243-3179	Online Order Form: <a href="http://www.iowabar.org">www.iowabar.org</a> (Select "Publications" from the left menu, select "ISBA Legal Manuals" from the center menu, find the "Iowa Land Title Standards" publication)	David Kubicek Phone: (319) 366-7641	Member: Free at <a href="http://www.iowabar.org">www.iowabar.org</a>
<b>KS</b>	LexisNexis Publications 1-800-533-1637	Online Order Form: <a href="http://www.ksbar.org">www.ksbar.org</a> (Select "Lawyer Bookstore" from the left menu, under the heading "Real Estate Law" find the "Kansas Title Standards Handbook" publications)	Kellee P. Dunn-Walters Phone: (913) 253-8410	Member: Full - \$87.50 Supplement - \$38.50  Non-Member: Full - \$125.00 Supplement - \$55.00
<b>LA</b>	Contact Christine Richard at the Louisiana State Bar Association. Phone: (504) 566-1600	Online Order Form: <a href="http://www.lsba.org">www.lsba.org</a> (Select "Order Online" under the heading "Louisiana Uniform Title Standards" at lower right under "LSBA Books")	Malcolm Meyer Suite 2200, 1100 Poidres New Orleans, LA 70136 Phone: (504) 585-7711 (Former Chair of Uniform Title Standards Committee – Committee has dissolved)	\$35.00 + \$6.00 S.H.
<b>ME</b>	Contact Rita Lessner at the Maine Bar Association. Phone: (207) 622-7523 Fax: (207) 623-0083	Online Order Form: <a href="http://www.mainebar.org">www.mainebar.org</a> (Select "Store" from top menu, select "Real Estate Law" from left menu, find "Maine Title Standards – Fourth Edition")	Howard Lake Phone: (207) 377-6953 Email: <a href="mailto:hlake@huflake.com">hlake@huflake.com</a>	Member: \$50.00 + Tax  Non-Member: \$90.00 + Tax (if in-state) \$90.00 (if out-of-state)
<b>MA</b>	Contact Bob Gaudette at the Real Estate Bar Association of Massachusetts	Download Site: <a href="http://www.reba.net">www.reba.net</a> (Must be member to access)	Chris S. Pitt One Boston Place Boston, MA 02108	Must be a member to order.

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	Email: <a href="mailto:admin@reba.net">admin@reba.net</a>		Phone: (617) 5557-5907 Email: <a href="mailto:Cpitt@rc.com">Cpitt@rc.com</a>	
<b>MI</b>	Contact Amy Castner at the Michigan State Bar. Phone: (517) 346-6322 Email: <a href="mailto:Acastner@mail.michbar.org">Acastner@mail.michbar.org</a>	Online Order Form: <a href="http://www.michbar.org">www.michbar.org</a> (Select "Member Resources" from top menu, select "Publications" from center menu, under the heading "Booklets" select "Publication Order Form")	Jim Reed Phone: (269) 965-7000 E-mail: <a href="mailto:Jreed@Vandervoortlaw.com">Jreed@Vandervoortlaw.com</a>	\$17.25
<b>MN</b>	Contact Kim Basting at the Minnesota State Bar Association. Phone: (612) 278-6323	N/A	Larry Brynstad Phone: (763) 424-8811	Member: Full - \$60.00 Update - \$10.00  Non-Member: Full - \$100.00 Update - \$10.00
<b>MO</b>	These standards are too old and can no longer be ordered.			
<b>MT</b>	These standards are too old and can no longer be ordered.			
<b>NE</b>	Contact Alicia Guerra at the Nebraska State Bar Association. Phone: (402) 475-7091	Download Site: <a href="http://www.nebar.com">www.nebar.com</a> (Under the heading "Nebraska Revised Real Estate Title Standards" in the right column of the main page select "title standards" to download or "order form" to order)	John A. Daum Phone: (402) 346-4401 Email: <a href="mailto:Jdaum@Stewart.com">Jdaum@Stewart.com</a> (No longer chairperson, but helped develop current standards)	Mail: \$10.00  Free at <a href="http://www.nebar.com">www.nebar.com</a> .
<b>NH</b>	Contact Audrey Carrel at the New Hampshire Bar. Phone: (603) 224-6942 Fax: (603) 224-2910	Download Site: <a href="http://www.nhbar.org">www.nhbar.org</a> (Click on "Legal Links" on the left menu, click on "NH	Carol Brooks Phone: (603) 621-9898 Email: <a href="mailto:lgraciano@laboelaw.com">lgraciano@laboelaw.com</a> (Real Property and Title Section Chair)	Online: No Charge

State	Ordering Information	Online Ordering/ Downloading Information	For More Information, Please Contact the Following	Cost
		Practice Guidelines”, select “NH Title Standards” from the center)		
<b>NM</b>	These standards are too old and can no longer be ordered.			
<b>NY</b>	These standards are too old and can no longer be ordered.			
<b>ND</b>	Contact Justine Rowinski at the North Dakota State Bar Association. Phone: (701) 255-1404	N/A	Grant Shaft Phone: (701) 772-8156 Fax: (701) 772-9564 E-mail: <a href="mailto:gshaft@gfwireless.com">gshaft@gfwireless.com</a> (Real Property Section Chair)	Full - \$95.00 Supplement - \$35.00
<b>OH</b>	N/A	Download Site: <a href="http://www.ohiobar.org">www.ohiobar.org</a> (Select “Practice Aids” from the left menu, select “Ohio Standards of Title Examination” from the center area)	John M. Liming Phone: (419) 782-6055	
<b>OK</b>	Contact Wanda Reece at the Oklahoma Bar Association. Phone: (405) 416-7042	Download Site: <a href="http://www.eppersonlaw.com">www.eppersonlaw.com</a> (Select left picture to enter site, select “Oklahoma T.E.S.” from the left menu, select “State T.E.S. Contents” from the center menu)	Kraettli Q. Epperson Phone: (405) 840-2470 Fax: (405) 843-4436 Email: <a href="mailto:kqelaw@aol.com">kqelaw@aol.com</a>	Free at <a href="http://www.eppersonlaw.com">www.eppersonlaw.com</a> .
<b>RI</b>	Contact Karen Lomax at the Rhode Island Bar Association CLE Department. Phone: (401) 421-5740 Fax: (401) 421-2703	N/A	Linda Tessman E-mail: <a href="mailto:Lindatessman@catic-e.com">Lindatessman@catic-e.com</a>	\$35.00
<b>SD</b>	Contact the State Bar of South Dakota. Phone: 1-800-952-2333 or (605) 224-7554	Download Site: <a href="http://www.sdbar.org">www.sdbar.org</a> (Select “Member Services” from the left menu, select	Alice Rokahr P.O. Box 37 Yankton, SD 57078 Phone: (605) 665-3000 or	Free at <a href="http://www.sdbar.org">www.sdbar.org</a> .



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		<p>“Proposed Title Standards” from the center area)</p>	<p>(402) 254-6600 Email: <a href="mailto:arokahr@yanktonlawyers.com">arokahr@yanktonlawyers.com</a></p>	
<b>TX</b>	N/A	<p>Download Site: <a href="http://www.reptl.org">www.reptl.org</a> (Select “Information” from the bottom menu, under the heading “Lawyers” select “Texas Title Examination Standards”)</p>	<p>Edward H. Hill Phone: (806) 379-0363 Fax: (806) 376-5613</p>	Free at <a href="http://www.reptl.org">www.reptl.org</a>
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<b>VT</b>	N/A	<p>Download Site: <a href="http://www.vtbar.org">www.vtbar.org</a> (Select “Attorney Resources” from the left menu, select “VT Title Standards” from the dropdown options, select the “click here” option at the top of the page to view all of the standards)</p>		No Charge
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<b>WY</b>	These standards are too old and can no longer be ordered.			

The following are the chapter topics for those sets of standards for the six (6) states within the RMMLF with current sets of standards (the other RMMLF states do not have current standards:

### **COLORADO**

- I. TITLE EXAMINATION: GENERALLY
- II. ACTIONS AND PROCEEDINGS
- III. CONVEYANCING
- IV. CONVEYANCES FROM PUBLIC OFFICIALS
- V. CAPACITY TO CONVEY
- VI. ENTITIES
- VII. COTENANCY
- VIII. LEGAL DESCRIPTIONS
- IX. VARIANCES, INCONSISTENCIES, AND OMISSIONS
- X. RELEASES
- XI. DECEDENTS' ESTATES
- XII. CONSERVATORSHIP PROCEEDINGS
- XIII. TRUSTS AND TRUSTEES
- XIV. HOMESTEADS
- XV. SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

### **NEBRASKA**

- I. ABSTRACTS
- II. SUBDIVISIONS & ZONING
- III. ENTITIES
- IV. CONVEYANCES
- V. HUSBAND AND WIFE
- VI. JUDICIAL PROCEEDINGS
- VII. MORTGAGES, DEEDS OF TRUST, LIENS & ENCUMBRANCES
- VIII. NAMES
- IX. DECEDENTS & DECEDENTS' ESTATES
- X. STATUTES OF LIMITATION, REPOSE & CURATIVE ACTS
- XI. MARKETABLE TITLE
- XII. BANKRUPTCY
- XIII. AFFIDAVITS, ACKNOWLEDGMENTS, RECITALS & JURATS
- XIV. TRUSTS
- XV. MINERAL INTERESTS
- XVI. POWERS OF ATTORNEY

### **NORTH DAKOTA**

PART 1 - INTRODUCTORY MATERIALS

PART 2 – TITLE STANDARDS

- I. SOURCE OF TITLE AND TITLE TRANSFERS

- II. CAPABILITIES AND DISABILITIES OF GRANTORS AND GRANTEES
  - III. PREMISES CONVEYED
  - IV. ESTATES AND TENANCY
  - V. MATTER OF FORM
  - VI. RECORDING
  - VII. ENCUMBRANCES OTHER THAN LIENS
  - VIII. MORTGAGES AND OTHER CONSENSUAL LIENS
  - IX. JUDGMENT AND OTHER NON-CONSENSUAL LIENS
  - X. NAMES
  - XI. CONTRACTS FOR DEED
  - XII. PROBATE
  - XIII. PARTNERSHIPS
  - XIV. PLATS
  - XV. CONDOMINIUMS
  - XVI. BANKRUPTCY
  - XVII. MINERALS
  - XVIII. CURATIVE ACTS AND OCCURRENCES; MISCELLANEOUS
- PART 3 – PRACTICE GUIDE

## **OKLAHOMA**

- I. EXAMINATION GENERALLY
  - II. THE ABSTRACT
  - III. INSTRUMENTS IN THE RECORD
  - IV. CAPACITY TO CONVEY
  - V. NAMES VARIANCES
  - VI. EXECUTION, ACKNOWLEDGMENT AND RECORDING
  - VII. MARITAL INTERESTS
  - VIII. JOINT TENANCIES AND LIFE ESTATES
  - IX. – XI. RESERVED FOR FUTURE USE
- ARTICLE II: ENTITIES**
- XII. CORPORATIONS
  - XIII. PARTNERSHIPS AND JOINT VENTURES
  - XIV. LIMITED LIABILITY COMPANIES
  - XV. TRUSTS AND TRUSTEES
  - XVI. FINANCIAL INSTITUTIONS IN RECEIVERSHIP OR LIQUIDATION
  - XVII. TITLE THROUGH DECEDENTS' ESTATES
  - XVIII. CONVEYANCES BY MISCELLANEOUS ENTITIES
  - XIX. – XXII. RESERVED FOR FUTURE USE
- ARTICLE III: LIENS & ENCUBRANCES**
- XXIII. JUDGMENTS, EXECUTION AND ATTACHEMENT
  - XXIV. MORTGAGES AND OTHER LIENS
  - XXV. TAX LIENS
  - XXVI. – XXVIII. RESERVED FOR FUTURE USE
- ARTICLE IV: CURATIVE ACTS**
- XXIX. SIMPLIFICATION OF LAND TITLES ACT
  - XXX. MARKERTABLE RECORD TITLE

XXXI. FEDERAL NONJUDICIAL MORTGAGE FORECLOSURE

XXXII. – XXXIII. RESERVED FOR FUTURE USE

**ARTICLE V: MISCELLANEOUS**

XXXIV. BANKRUPTCIES

XXXV. MISCELLANEOUS

**SOUTH DAKOTA**

(NO CHAPTER TOPICS AVAILABLE)

**TEXAS**

I. TITLE EXAMINER

II. MARKETABLE TITLE

III. NAME VARIANCES

IV. EXECUTION, KNOWLEDGMENT, AND RECORDATION

V. LAND DESCRIPTIONS

VI. CORPORATE CONVEYANCES

VII. CONVEYANCES INVOLVING PARTNERSHIPS, JOINT VENTURES,  
AND UNINCORPORATED ASSOCIATIONS

VIII. POWERS OF ATTORNEY

IX. CONVEYANCES INVOLVING TRUSTEES

X. CAPACITY OF CONVEY

XI. DECEDENTS' ESTATES

XII. BANKRUPTCIES

XIII. FORECLOSURE

XIV. AFFIDAVITS AND RECITALS

XV. MARITAL INTERESTS

XVI. LIENS AND LIS PENDENS

## VI. ON-LINE ACCESS TO COUNTY CLERK RECORDS IN OKLAHOMA

Part of the benefit of new computer driven on-line technology is the advent of the digitizing and indexing of land documents upon their recording with the local county clerk, with the subsequent result that the county land records (grantor/grantee and tract indices, including images of the documents) are becoming accessible through on-line systems from remote sites, including the title examiner's own office.

In addition, due to federal prodding, the possibility of initial recording of digital documents, rather than recording paper documents or even scanned versions of such documents, is increasing. New model state statutes to implement such mandates are coming from the Uniform Laws Commission, and include the Uniform Electronic Transactions Act (UETA) and its more recent cousin the Uniform Real Property Electronic Recording Act (URPERA).

For instance, the two largest counties in Oklahoma allow electronic recording of land documents, and many of the 77 counties in Oklahoma have their indices and document images available on line. A recent survey by this author in Oklahoma produced a report describing how to access such on-line indices. Such report is available at the author's website: [www.eppersonlaw.com](http://www.eppersonlaw.com) . Such website acts as the unofficial website for the Real Property Law Section of the Oklahoma Bar Association.