UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY: STATUTES, REGULATIONS, CASES, ATTORNEY GENERAL OPINIONS & TITLE EXAMINATION STANDARDS: REVISIONS FOR 2009-2010

(Covering July 1, 2009 to June 30, 2010)

BY:

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REAL PROPERTY LAW SECTION

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COURTS: Okla. Sup. Ct. (May 1979); U.S. Dist. Ct., West. Dist of Okla. (Dec. 1984)

EDUCATION: University of Oklahoma [B.A. (PoliSci-Urban Admin.) 1971];
State Univ. of N.Y. at Stony Brook [M.S. (Urban and Policy Sciences) 1974]; &
Oklahoma City University [J.D. (Law) 1978].

PRACTICE: Oil/Gas & Real Property Litigation (Arbitration, Shared Surface Use, Quiet Title, Condemnation, & Restrictions);
Condo/HOA Creation & Representation; and
Commercial Real Estate Acquisition & Development.

MEMBERSHIPS/POSITIONS:

OBA Title Examination Standards Committee (Chairperson: 1992-Present);
OBA Nat'l T.E.S. Resource Center (Director: 1989 - Present);
OBA Real Property Law Section (current member, former Chairperson);
OKC Real Property Lawyers Assn. (current member, former President);
OKC Mineral Law Society (current member); and
BSA: VC & Chair, Baden-Powell Dist., Last Frontier Council (2000-2007); former Cubmaster, Pack 5, & Asst SM, Troop 193, All Souls Episcopal Church

SPECIAL EXPERIENCE:

Court-appointed Receiver for 5 Abstract Companies in Oklahoma (2007-2008)
Oklahoma City University School of Law adjunct professor: "Oklahoma Land Titles" course (1982 - Present);
Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor and Contributing Author;
Basye on Clearing Land Titles, Author : Pocket Part Update (1998 – 2000); Contributing Author: Pocket Part Update (2001-Present)
Oklahoma Bar Review faculty: "Real Property" (1998 - 2003);
Chairman: OBA/OLTA Uniform Abstract Certif. Committee (1982);
In-House Counsel: LTOC & AGT (1979-1981);
Urban Planner: OCAP, DECA & ODOT (1974-1979).

SELECTED PUBLICATIONS:

"Well Site Safety Zone Act: New Life for Act", 80 OBJ 1061 (May 9. 2009);
"The Elusive Mortgage Foreclosure Judgment Lien", V.41, No.5& 6 Oklahoma County Bar Association Briefcase pages 9 & 18, (May and June 2009); and
"Who Suffers if the County Clerk Mis-Indexes a Conveyance or a Money Judgment?" V.41, No.8 &9 Oklahoma County Bar Association Briefcase pages 7 &7, (August and September 2009).

SPECIAL HONORS: Okla. Bar Assn. 1997 Maurice Merrill *Golden Quill Award*;
Okla. Bar Assn. 1990 Earl Sneed *Continuing Legal Education Award*;
Okla. Bar Assn. 1990 Golden Gavel Award: *Title Exam. Standards Committee.;*
Who's Who In: The World, America, The South & Southwest, American Law, American Education, and Emerging Leaders in America

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I. INTRODUCTION

The determination of the existence and the holder of "valid" title (i.e., enforceable between the parties), and "marketable" title (i.e., determinable "of record", and relied upon by third party grantees and lenders) to a parcel of real property, requires the application of the current law of the State where the land is located. (60 O.S.§21)

The following materials reflect a listing of selected changes in the law of Oklahoma related to real property title issues, arising over the 12 months following June 30, 2009, including any (1) statutes enacted during the most recent State legislative session, (2) new regulations, (3) cases from the Oklahoma Supreme Court or the Court of Civil Appeals, (4) opinions from the Oklahoma Attorney General, and (5) Oklahoma Title Examination Standards adopted during that period.

II. STATUTORY CHANGES

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

(PREPARED BY JASON SOPER)

2009 - 2010 LEGISLATIVE SESSION

PENDING BILLS THAT MAY EFFECT REAL PROPERTY & TITLE EXAMINATION STANDARDS

Revised for June 19, 2010 Meeting

LAWS ENACTED IN THE SECOND TERM OF THE 2009-2010 LEGISLATIVE SESSION

SB 1287 Probate Procedure—Add persons to whom can consent to orders.
Status: Signed into law by the Governor on April 2, 2010.

Modifies Okla. Stat. tit. 58 § 239 to allow for a duly appointed personal representative of the estate of any deceased heir, devisee or legatee to consent to a "239 proceeding" on behalf of the deceased heir's estate.

SB 1895 Probate and estate tax—release required
Status: Signed into law by the Governor on June 9, 2010

Modifies Okla. Stat. tit. 58 § 282.1 to conform with modified estate tax law in stating for deaths occurring on or after January 1, 2010, no release of estate tax liability is necessary for the title of real property to be marketable.

SB 2104 Relating to Mechanic and Materialmen Liens – increasing time to post notice of lien.
Status: Signed into law by the Governor on April 20, 2010.

Modifies Okla. Stat. tit. 42 § 143.1 to allow for five (5) business days to mail a notice of a lien filing to the landowner. The statue currently requires such notice to be mailed within one (1) day of the lien filing.

SB 2154 Civil procedure; modifying certain procedure for deficiency judgment.
Status: Signed into law by the Governor on May 4, 2010.

Modifies Okla. Stat. tit. 12 § 686 to deal with perfecting priority rights in regards to judgments/deficiency judgments in foreclosure.

SB 2201 Probate Procedure—Allowing administrators/executors of estates and guardians of persons to lease property for expanded purposes.

Status: Signed into law by the Governor on April 2, 2010.

Modifies Okla. Stat. tit. 58 §§ 931 and 961 to specifically allow for administrators/ executors of estates and guardians of wards to lease estate property for wind energy conversion purposes.

SB 2203 Probate Procedure—providing for termination of attorney-in-fact under certain circumstances.

Status: Signed into law by the Governor on June 6, 2010.

Modifies Okla. Stat. tit. 58 § 1074 to state that upon court appointment of a conservator, guardian of the estate or other fiduciary, the power of an existing attorney- in-fact's shall terminate upon notice of such appointment.

SB 2270 Probate procedure; providing procedures for transfer-on-death deed.

Status: Signed into law by the Governor on May 5, 2010.

Modifies Okla. Stat. tit. 58 § 1252 relating to the Nontestamentary Transfer of Property Act to require the execution of an affidavit to show acceptance of the Transfer on Death Deed and require its filing.

HB 1319 Probate procedure; providing for conveyance of certain mineral interest; requiring court clerks to accept certain affidavits as conveyances.

Status: Signed into law by the Governor on May 10, 2010.

Law allows for the transfer of mineral interests upon presentment of an affidavit to the county clerk.

HB 2939 Probate procedure-amending the Uniform Durable Power of Attorney Act.

Status: Signed into law by the Governor on June 5, 2010

Modifies the Durable Power of Attorney Act provisions found in Okla. Stat. tit. 58 §§1072, 1072.3, 1073 & 1074 to add "or extended absence" of the principal as a triggering mechanism for the POA in addition to subsequent disability or incapacity.

LAWS ENACTED IN THE FIRST TERM OF THE 2009-2010 LEGISLATIVE SESSION

SB349 Property remediation-Require recordable notices.
Status: Signed into law by the Governor on April 3, 2009.

Okla. Stat. tit. 27A § 2001 is amended to read "or cause to be filed" relating to the Department of Environmental Quality's mandate to record in the land records notices of any permit issued under the Oklahoma Hazardous Waste Management Act. Any notice filed pursuant to this section now runs with the land. It may not be extinguished, limited, or impaired by application of the provisions of Okla. Stat. tit. 16 §§ 71 through 85 or the Uniform Unclaimed Property Act.

HB 1016 Modifies date for Oklahoma Real Estate Commission
Status: Signed into law by Governor on April 13, 2009.

Amends Okla. Stat. tit. 59 § 858, et. seq. New law simply extends the life of the Oklahoma Real Estate Commission to July 1, 2013 (previously set to expire on July 1, 2009).

HB 1048 Relates to Delinquent Real Property Taxes
Status: Signed into law by Governor on May 13, 2009.

Amending Okla. Stat. tit. 68 § 3106. The measure allows for notices to be posted (for 2 consecutive weeks) at anytime after April 1, through the end of September. As part of this change, the measure removes the requirement that notices that are mailed must be sent by way of certified mail. The measure also clarifies the definition of incapacitated in this statute, so that it is clear that it only refers to mental incapacitation, and not physical disability. The measure also decreases the time that excess funds (from the sale of lands seized and sold due to a tax lien) have to remain available for the former landowner to claim the funds. The measure reduces the time period from 2 years to 1 year.

HB1389 Annexation by a governing body; providing for award of attorney fees.
Status: Signed into law by Governor on May 21, 2009.

Amending Okla. Stat. tit. 11 § 21-103. This measure provides that a prevailing party be awarded attorney fees and court costs in annexation disputes, including when a municipality withdraws, revokes or reverses the ordinance at issue in response to litigation prior to the issuance of a final judgment.

HB1473 Annexation procedure for cities; land exempt from certain ordinances.
Status: Signed into law by Governor on May 11, 2009.

Amending Okla. Stat. tit. 11§ 21-103. This measure exempts agricultural parcels of land 10 acres in size or larger from ordinances restricting land use and building construction upon annexation into municipal limits, provided that such activities are related to agricultural purposes.

III. REGULATORY CHANGES

A. UNIFORM ABSTRACTOR'S CERTIFICATE

Effective as of September 1, 2010, the Oklahoma Abstractors Board adopted a new Uniform Abstractor's Certificate. It is on the following page.

CERTIFICATE

The undersigned hereby certifies that:
1. There is shown herein a true and correct abstract of all instruments filed for record or recorded in the Office of the County Clerk of [COUNTY] County during the period covered by this certificate, affecting the title to the following described real property:
[LEGAL DESCRIPTION]
Pursuant to O.A.C. 5:11-5-3(b) this Abstract has been prepared for a fee simple estate, less and except oil, gas and other mineral interests. All instruments covering oil, gas and other minerals, including but not limited to deeds, grants, leases, assignments and releases thereof, have been omitted.
2. The records of the Court Clerk and the County Clerk of said County disclose that there are no executions, court proceedings, suits pending in any of the Courts of Record in said County, or liens of any kind affecting the title to said real estate, and there are no judgments or transcripts of judgments indexed and docketed on the judgment docket against any of the following named parties affecting the title to said real estate, except as shown in the Abstract:
[NAMES CERTIFIED TO / NOTATION AS TO OUTSTANDING PROCEEDINGS / OR "NONE FOUND"]
3. The records of the County Treasurer of said County disclose that:
a. Said real property has been assessed for ad valorem taxes for each year covered by this Certificate for which ad valorem taxes could be a lien against said real property; and there are no ad valorem taxes which are a lien on said property, due and unpaid on said property, nor tax sales thereof unredeemed, nor tax deeds given thereon, EXCEPT:
[AD VALOREM TAXES]
b. There are no unpaid personal property taxes which are a lien on the real property and there are no matured or unmatured unpaid special assessments certified to the Office of the County Treasurer due and unpaid, nor tax sales thereof unredeemed, nor tax deeds given thereon, EXCEPT:
[PERSONAL PROPERTY TAXES / SPECIAL ASSESSMENTS]
4. The undersigned is a duly qualified and lawfully bonded abstractor, who is granted a Certificate of Authority in accordance with the Statutes of the State of Oklahoma to engage in the business of abstracting, and whose bond is in force at the date of this Certificate. The undersigned has a complete set of indexes to the records of said County, in compliance with Title 1 of the Oklahoma Statutes, compiled from the records and not copied from the indexes in the County Clerk, and the searches covered by this certificate reflect the records of said County and are not restricted to the indexes in the Office of the County Clerk.
This certificate covers pages numbered _____ to _____ both inclusive, and covers the period from _____ at __.m. to _____ at __.m.
Dated this _____ day of _____, _____
[NAME OF CERTIFICATE OF AUTHORITY]
By: _____ By: _____
[Entity Officer] Abstractor, License # _____
OAB Certificate of Authority #_____

B. DATA ENTRY CLERK NOT REQUIRED TO HOLD ABSTRACTOR'S CERTIFICATE

On March 11, 2010, the Oklahoma Abstractors Board, pursuant to its legal authority to adopt rules found at Title 1 O.S. §§ 22, et seq., adopted new rules for Title 5, Chapter 11 of the Oklahoma Abstractors Act which becomes effective July 1, 2010. The following provision was the most significant rule revision:

5:11-3-1. Who must hold abstract license

(a) Any person in the employ of a holder of a certificate of authority or permit, or a holder of a certificate of authority who is an individual actively engaged in the process of preparing abstracts, or the holder of a permit who is an individual actively engaged in the construction of an abstract plant, shall be required to have an individual abstract license.

(b) Any person who is employed by a holder of a permit or certificate of authority whose sole function is limited to reviewing documents to determine the type of instrument, date, parties, recording information and legal description, and entering such information into a manual or computer indexing system shall not be required to hold an abstract license. Such activity shall be conducted under the supervision of a licensed abstractor. Prior to the final entry of such documents to the abstract plant, a licensed abstractor must review, verify and accept such entries as final on behalf of the holder of the permit or certificate of authority. Any matter entered into the indexing system by an unlicensed person without proper licensed supervision may be deemed a violation of this Act.

(c) The holder of a certificate of authority or permit shall provide the Board with a list of the names of licensed and unlicensed employees in such form as directed by the Board.

C. OKLAHOMA REAL ESTATE COMMISSION ADOPTS NEW RESIDENTIAL PURCHASE CONTRACT

The Oklahoma Real Estate Commission adopted – as of January 2010 --a new residential purchase contract which assumes the parties always want to retain their minerals. The form of the contract (VERSION 1) is on the following page. A further revision is under consideration, as shown on the page following VERSION 1 (VERSION 2).

VERSION 1

OKLAHOMA REAL ESTATE COMMISSION
This is a legally binding Contract;
if not understood seek advice from an attorney

OKLAHOMA UNIFORM CONTRACT OF SALE OF REAL ESTATE

(Surface Rights Only)

CONTRACT DOCUMENTS. The Contract is defined as this document with the following attachment(s):

(check as applicable)

____ Conventional Supplemental ___ Single Family Homeowner's Association Supplemental
____ FHA Supplemental ___ Condominium/Townhouse Association Supplemental
____ VA Supplemental ___ Supplemental Addendum
____ Assumption/Other ___ _____

Parties . ThE Contract is entered into between:

_____
_____ "Seller"

and **[illegible]** "Buyer".

The Parties' signatures at the end of the Contract, which includes any attachments or documents incorporated by reference, with delivery to their respective Brokers, if applicable, will create a valid and binding Contract, which sets forth their complete understanding of the terms of the Contract. The Contract shall be executed by original signatures of the parties or by signatures as reflected on separate identical Contract counterparts (carbon, photo or fax copies). All prior verbal or written negotiations, representations and agreements are superceded by the Contract, which may only be modified or assigned by a further written agreement of Buyer and Seller.

Seller agrees to sell and convey by General Warranty Deed, and Buyer agrees to accept such deed and buy the Property described herein, on the following terms and conditions:

The Property shall consist of the following described real estate located in _____ County, Oklahoma.

1. LEGAL DESCRIPTION.

[illegible]

_____
_____
_____
_____
_____
_____
_____
_____

Property Address City Zip

Together with all fixtures and improvements, and all appurtenances, subject to existing zoning ordinances, plat or deed restrictions, utility easements serving the Property, (collectively referred to as "the Property"); **less and except** all the oil, gas and other minerals in and under and that may be produced from the Property.

2. Purchase Price , Earnest Mone y and source of funds . This is a CASH TRANSACTION unless a Financing

Supplement Agreement is attached. The Purchase Price is $_____ payable by Buyer as follows: Buyer has paid $_____ as Earnest Money on execution of the Contract, and Buyer shall pay the balance of the purchase price and Buyer's Closing costs at Closing. Upon execution of the Contract, the Earnest Money shall be deposited in the trust account of _____or if left blank, the Listing Broker's trust account, as part payment of the purchase price and/or closing costs. If interest accrues on Earnest Money Deposit in Listing Broker's trust account, said interest shall be paid to "Oklahoma Housing Foundation".

3. **Closin g, FUNDING AND Posession** . The Closing process includes execution of documents, delivery of deed and receipt of funds by Seller and shall be completed on or before _____, ("Closing Date") or not later than _____ days (five [5] days if left blank) thereafter caused by a delay of the Closing process, or such later date as may be necessary in the Title Evidence provision (reference Paragraph 10 D and E). Possession shall be transferred upon conclusion of Closing process unless otherwise provided below:

_____
_____.

In addition to costs and expenses otherwise required to be paid in accordance with terms of the Contract, Buyer shall pay Buyer's Closing fee, Buyer's recording fees, and all other expenses required from Buyer. Seller shall pay documentary stamps required, Seller's Closing fee, Seller's recording fees, if any, and all other expenses required from Seller. Funds required from Buyer and Seller at Closing shall be either cash, cashier's check or wire transfer.

4. ACCESSORIES, EQUIPMENT AND SYSTEMS. The following items, if existing on the Property, unless otherwise excluded, shall remain with the Property at no additional cost to Buyer:

- Attic and ceiling fan(s)
- Bathroom mirror(s)
- Other mirrors, if attached
- Central vacuum & attachments
- Floor coverings, if attached
- Key(s) to the property
- Built-in and under cabinet/counter appliance(s)
- Free standing slide-in/drop-in kitchen stove
- Built-in sound system(s)/speaker(s)
- Lighting & light fixtures
- Fire, smoke and security system(s), if owned
- Shelving, if attached

• Fireplace inserts, logs, grates, doors and screens
• Free standing heating unit(s)
• Humidifier(s), if attached
• Water conditioning systems, if owned
• Window treatments & coverings, interior & exterior
• Storm windows, screens & storm doors
• Garage door opener(s) & remote transmitting unit(s)
• Fences (includes sub-surface electric & components)
• Mailboxes/Flag poles
• Outside cooking unit(s), if attached
• Propane tank(s) if owned
• TV antennas/satellite dish system(s) and control(s), if owned
• Sprinkler systems & control(s)
• Swimming Pool/Spa equipment/ accessories
• Attached recreational equipment
• Exterior landscaping and lighting
• Entry gate control(s)
• Water meter, sewer/trash membership, if owned
• All remote controls, if applicable
• Transferable Service Agreements and Product Warranties

A. Additional Inclusions. The following items shall also remain with the Property at no additional cost to Buyer:

_____
_____
_____
_____

B. Exclusions. The following items shall not remain with the Property:

_____
_____
_____.

5. time periods specified in Contract . Time periods for Investigations, Inspections and Reviews and Financing Supplement Agreement shall commence on _____ (**Time Reference Date**), regardless of the date the Contract is signed by Buyer and Seller. The day after the Time Reference Date shall be counted as day one (1). If left blank, the Time Reference Date shall be the third day after the last date of signatures of the parties.

6. RESIDENTIAL PROPERTY CONDITION DISCLOSURE. No representations by Seller regarding the condition of Property or environmental hazards are expressed or implied, other than as specified in the Oklahoma Residential Property Condition Disclosure Statement (“Disclosure Statement”) or the Oklahoma Property Condition Disclaimer Statement (“Disclaimer

Statement"), if applicable. A real estate licensee has no duty to Seller or Buyer to conduct an independent inspection of
the Property and has no duty to independently verify accuracy or completeness of any statement made by Seller in the
Disclosure Statement and any amendment or the Disclaimer Statement.

7. INVESTIGATIONS, INSPECTIONS and REVIEWS.

A. Buyer shall have _____ days (10 days if left blank) after the Time Reference Date to complete any investigations,
inspections, and reviews. Seller shall have water, gas and electricity turned on and serving the Property for Buyer's
inspections, and through the date of possession or Closing, whichever occurs first. If required by ordinance, Seller, or
Seller's Broker, if applicable, shall deliver to Buyer, in care of Buyer's Broker, if applicable, within five (5) days after the
Time Reference Date any written notices affecting the Property.

B. Buyer, together with persons deemed qualified by Buyer and at Buyer's expense, shall have the right to enter upon the
Property to conduct any and all investigations, inspections, and reviews of the Property. Buyer's right to enter upon the
Property shall extend to Oklahoma licensed Home Inspectors and licensed architects for purposes of performing a home
inspection. Buyer's right to enter upon the Property shall also extend to registered professional engineers, professional
craftsman and/or other individuals retained by Buyer to perform a limited or specialized investigation, inspection or
review of the Property pursuant to a license or registration from the appropriate State licensing board, commission
or department. Finally, Buyer's right to enter upon the Property shall extend to any other person representing Buyer
to conduct an investigation, inspection and/or review which is lawful but otherwise unregulated or unlicensed under
Oklahoma Law. Buyer's investigations, inspections, and reviews may include, but not be limited to, the following:

1) **Disclosure Statement or Disclaimer Statement unless exempt**
2) **Flood, Storm Run off Water, Storm Sewer Backup or Water History**
3) **Psychologically Impacted Property and Megan's Law**
4) **Hazard Insurance** (Property insurability)
5) **Environmental Risks**, including, but not limited to soil, air, water, hydrocarbon, chemical, carbon, asbestos, mold,
radon gas, lead-based paint
6) **Roof,** structural members, roof decking, coverings and related components
7) **Home Inspection**
8) **Structural Inspection**
9) **Fixtures, Equipment and Systems Inspection.** All fixtures, equipment and systems relating to plumbing
(including sewer/septic system and water supply), heating, cooling, electrical, built-in appliances, swimming pool,
spa, sprinkler systems, and security systems

10) **Termites and other Wood Destroying Insects Inspection**
11) **Use of Property.** Property use restrictions, building restrictions, easements, restrictive covenants, zoning

ordinances and regulations, mandatory Homeowner Associations and dues
12) **Square Footage.** Buyer shall not rely on any quoted square footage and shall have the right to measure the
Property.
13)
_____
_____

C. Treatments , Repairs and Replacements (tr).
1) **TERMITE Treatments AND OTHER Wood Destro ying INSECTS**. Seller's obligation to pay treatment and
repair cost in relation to termites and other wood destroying insects shall be limited to the residential structure,
garage(s) and other structures as designated in Paragraph 13 and as provided in subparagraph C2b below.
2) **TREATMENTS, Repairs , Replacements and Reviews .** Buyer or Buyer's Broker, if applicable, within 24 hours
after expiration of the time period referenced in 7A, shall deliver to Seller, in care of the Seller's Broker, if applicable, a copy
of all written reports obtained by Buyer, if any, pertaining to the Property and Buyer shall select one of the following:
a. If, in the sole opinion of the Buyer, results of Investigations, Inspections or Reviews are unsatisfactory, the
Buyer may cancel the Contract by delivering written notice of cancellation to Seller, in care of Seller's Broker, if
applicable, and receive refund of Earnest Money.
OR
b. Buyer, upon completion of all Investigations, Inspections and Reviews, waives Buyer's right to cancel as
provided in Paragraph 7, subparagraph C2a above, by delivering to Seller, in care of Seller's Broker, if applicable,
a written list on a Notice of Treatments, Repairs, and Replacements form (TRR form) of those items to be
treated, repaired or replaced (including repairs caused by termites and other wood destroying insects) that
are not in normal working order (defined as the system or component functions without defect for the primary
purpose and manner for which it was installed. Defect means a condition, malfunction or problem, which is not
decorative, that will have a materially adverse effect on the value of a system or component).
i. Seller shall have _____ days (5 days if blank) after receipt of the completed TRR form from Seller's
Broker, if applicable, to obtain costs estimates. Seller agrees to pay up to $_____ ("Repair Cap") of
costs of TRR's. If Seller, or Seller's Broker, if applicable, obtains cost estimates which exceed Repair Cap,
Seller, or Seller's Broker, if applicable, shall notify Buyer or Buyer's Broker, if applicable, in writing, within two
days after receipt of cost estimates.
If the amount of the TRR's exceed the amount of the Repair Cap, Buyer and Seller shall have _____ days (3 days
if blank) thereafter to negotiate the payment of costs in excess of Repair Cap. If a written agreement is reached,
Seller shall complete all agreed TRR's prior to the Closing Date. If an agreement is not reached within the time

specified in this provision, the Contract shall become null and void and Earnest Money returned to Buyer.
ii. If Seller fails to obtain cost estimates within the stated time, Buyer shall then have _____ days (5 days if
blank) to:
a) Enter upon the Property to obtain costs estimates and require Seller to be responsible for all TRR's as
noted on Buyer's TRR form, up to the Repair Cap; and,
b) If the amount of the TRR's exceed the amount of the Repair Cap, Buyer and Seller shall have _____
days (3 days if blank) thereafter to negotiate the payment of costs in excess of Repair Cap. If a written
agreement is reached, Seller shall complete all agreed TRR's prior to the Closing Date. If an agreement
is not reached within the time specified in this provision, the Contract shall become null and void and
Earnest Money returned to Buyer.

D. Expiration of Buyer's Right to Cancel Contract .

1) Failure of Buyer to complete one of the following shall constitute acceptance of the Property regardless of its
condition:
a. Perform any Investigations, Inspections or Reviews;
b. Deliver a written list on a TRR form of items to be treated, repaired and replaced; or
c. Cancel the Contract within the time periods in Investigations, Inspections or Reviews Paragraph.
2) After expiration of the time periods in Investigations, Inspections and Reviews Paragraph, Buyer's inability to obtain
a loan based on unavailability of hazard insurance coverage shall not relieve the Buyer of the obligation to close
transaction.
3) After expiration of the time periods in Investigations, Inspections and Reviews Paragraph, any square footage
calculation of the dwelling, including but not limited to appraisal or survey, indicating more or less than quoted, shall
not relieve the Buyer of the obligation to close this transaction.

E. Inspection of Treatments , Repairs and Replacements and final walk -throu gh.

1) Buyer, or other persons Buyer deems qualified, may perform re-inspections of Property pertaining to Treatments, Repairs
and Replacements.
2) Buyer may perform a final walk-through inspection, which Seller may attend. Seller shall deliver Property in the same
condition as it was on the date upon which Contract was signed by Buyer (ordinary wear and tear excepted) subject to
Treatments, Repairs and Replacements.
3) All inspections and re-inspections shall be paid by Buyer, unless prohibited by mortgage lender.

8. RISK OF LOSS. Until transfer of Title or transfer of possession, risk of loss to the Property, ordinary wear and tear excepted, shall
be upon Seller; after transfer of Title or transfer of possession, risk of loss shall be upon Buyer. (Parties are advised to address
insurance coverage regarding transfer of possession prior to Closing.)

9. acceptance of Propert y. Buyer, upon accepting Title or transfer of possession of the Property, shall be deemed to have
accepted the Property in its then condition. No warranties, expressed or implied, by Sellers, Brokers and/or their associated
licensees, with reference to the condition of the Property, shall be deemed to survive the Closing.

10. TITLE EVIDENCE.

A. Buyer 's Expense . Buyer, at Buyer's expense, shall obtain:

(**Check one)**

Attorney's
Title Opinion, which is not rendered for Title Insurance purposes.

OR

Commitment for Issuance of a Title Insurance Policy based on an Attorney's Title Opinion which is rendered for Title
Insurance purposes for the Owner's and Lender's Title Insurance Policy.

B. Seller 's Expense . Seller, at Seller's expense, within thirty (30) days prior to Closing Date, agrees to make available to
Buyer the following (*collectively referred to as* "*the Title Evidence*"):

1) A complete surface-rights-only Abstract of Title, last certified to a date subsequent to the Time Reference Date, by an
Oklahoma licensed and bonded abstract company;

OR

A copy of Seller's existing owner's title insurance policy issued by a title insurer licensed in the State of Oklahoma
together with a supplemental surface-rights-only abstract last certified to a date subsequent to the Time Reference Date,
by an Oklahoma licensed and bonded abstract company;

2) A current Uniform Commercial Code Search Certificate; and

3) An inspection certificate (commonly referred to as a "Mortgage Inspection Certificate") prepared subsequent to the Time
Reference Date by a licensed surveyor, which shall include a representation of the boundaries of the Property (without pin
stakes) and the improvements thereon.

C. Land or Boundar y Surve y. By initialing this space _____, Buyer agrees to waive Seller's obligation to provide a
Mortgage Inspection Certificate. Seller agrees that Buyer, at Buyer's expense, may have a licensed surveyor enter upon the
Property to perform a Land or Boundary (Pin Stake) Survey, in lieu of a Mortgage Inspection Certificate, that shall then be
considered as part of the Title Evidence.

D. Buyer to Examine Title Evidence .

1) Buyer shall have ten (10) days after receipt to examine the Title Evidence and to deliver Buyer's objections to Title to Seller
or Seller's Broker, if applicable. In the event the Title Evidence is not made available to Buyer within ten (10) days prior
to Closing Date, said Closing Date shall be extended to allow Buyer the ten (10) days from receipt to examine the Title
Evidence.

2) Buyer agrees to accept title subject to: (i) utility easements serving the property, (ii) building and use restrictions of
record, (iii) set back and building lines, (iv) zoning regulations, and (v) reserved and severed mineral rights, which
shall not be considered objections for requirements of Title.

E. Seller to Correct Issues With Title (if applicable), Possible Closin g Dela y. Upon receipt by Seller,

or in care of Seller's Broker, if applicable, of any title requirements reflected in an Attorney's Title Opinion or Title Insurance
Commitment, based upon the standard of marketable title set out in the Title Examination Standards of the Oklahoma Bar
Association, the parties agree to the following:
1) Seller, at Seller's expense, shall make reasonable efforts to obtain and/or execute all documents necessary to cure title
requirements identified by Buyer; and

2) Delay Closing Date for _____ days [thirty (30) days if blank], or a longer period as may be agreed upon in writing, to allow
Seller to cure Buyer's title requirements. In the event Seller cures Buyer's objection prior to the delayed Closing Date, Buyer
and Seller agree to close within five (5) days of notice of such cure. In the event that title requirements are not cured within
the time specified in this subparagraph, the Buyer may cancel the Contract and receive a refund of Earnest Money.
F. Upon Closing, any existing Abstract(s) of Title, owned by Seller, shall become the property of Buyer.

11. Taxes , Assessments and Proration S.

A. The following items shall be prorated to include the date of Closing: (i) General ad valorem taxes for the current
calendar year, if certified. However, if the amount of such taxes has not been fixed, the proration shall be based upon
the rate of levy for the previous calendar year and the most current assessed value available at the time of Closing; and
(ii) Homeowner's Association assessments and dues, if any, based on most recent assessments.
B. The following items shall be paid by Seller at Closing: (i) All special assessments against the Property (matured or
not matured), whether or not payable in installments; (ii) Documentary Stamps; (iii) all utility bills, actual or estimated;
(iv) all taxes other than general ad valorem taxes which are or may become a lien against the Property; (v) any labor,
materials, or other expenses related to the Property, incurred prior to Closing which is or may become a lien against the
Property.
C. At Closing all leases, if any, shall be assigned to Buyer and security deposits, if any, shall be transferred to Buyer.
Prepaid rent and lease payments shall be prorated through the date of Closing.
D. If applicable, membership and meters in utility districts to include, but not limited to, water, sewer, ambulance, fire,
garbage, shall be transferred at no cost to Buyer at Closing.

12. Residential Service Agreement .

(Check One)

A. The Property shall not be covered by a Residential Service Agreement.
B. Seller currently has a Residential Service Agreement in effect on the Property. Seller, at Seller's expense, shall
transfer the agreement with one (1) year coverage to the Buyer at Closing.
C. The Property shall be covered by a Residential Service Agreement selected by the Buyer at an approximate cost of
$_____. Seller agrees to pay $_____ and Buyer agrees to pay the balance.

The Seller and Buyer acknowledge that the real estate broker(s) may receive a service/administration fee for the referral
and processing of the Residential Service Agreement.
Buyer acknowledges that a Residential Service Agreement does not replace/substitute Property inspection rights.

13. ADDITIONAl PROVISIONs.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

14. Mediation . Any dispute arising with respect to the Contract shall first be submitted to a dispute resolution mediation
system servicing the area in which the Property is located. Any settlement agreement shall be binding. In the event an
agreement is not reached, the parties may pursue legal remedies as provided by the Contract.

15. BREACH AND FAILURE TO CLOSE.

A. Upon Breach by Seller . If the Buyer performs all of the obligations of Buyer, and if, within five (5) days after the
date specified for Closing under Paragraph 3, Seller fails to convey the Title or fails to perform any other obligations
of the Seller under this Contract, then Buyer shall be entitled to either cancel and terminate this Contract, return the
abstract to Seller and receive a refund of the Earnest Money, or pursue any other remedy available at law or in equity,
including specific performance.

B. Upon Breach by Buyer . If, after the Seller has performed Seller's obligation under this Contract, and if, within five
(5) days after the date specified for Closing under Paragraph 3, the Buyer fails to provide funding, or to perform any
other obligations of the Buyer under this Contract, then the Seller may, at Seller's option, cancel and terminate this
Contract and retain all sums paid by the Buyer, but not to exceed 5% of the purchase price, as liquidated damages, or
pursue any other remedy available at law or in equity, including specific performance.

16. Incurred Expenses and Release of Earnest Mone y.

A. Incured Expenses . Buyer and Seller agree that any expenses, incurred on their behalf, shall be paid by the party
incurring such expenses and shall not be paid from Earnest Money.

B. Release of Earnest Mone y. In the event a dispute arises prior to the release of Earnest Money held in escrow,
the escrow holder shall retain said Earnest Money until one of the following occur:
1) A written release is executed by Buyer and Seller agreeing to its disbursement;
2) Agreement of disbursement is reached through Mediation;
3) Interpleader or legal action is filed, at which time the Earnest Money shall be deposited with the Court Clerk; **or**

4) The passage of thirty (30) days from the date of final termination of the Contract has occurred and options 1), 2)
or 3) above have not been exercised; Broker escrow holder, at Broker's discretion, may disburse Earnest Money.
Such disbursement may be made only after fifteen (15) days written notice to Buyer and Seller at their last known
address stating the escrow holder's proposed disbursement.

17. deliver y of ACCEPTANCE of offer or counteroffer . The Buyer and Seller authorize their respective Brokers,
if applicable, to receive delivery of an accepted offer or counteroffer.

18. NON-FOREIGN SELLER. Seller represents that at the time of acceptance of this contract and at the time of Closing, Seller
is not a "foreign person" as such term is defined in the Foreign Investments in Real Property Tax Act of 1980 (26 USC
Section 1445(f) et. Sec) ("FIRPTA"). If either the sales price of the property exceeds $300,000.00 or the buyer does not
intend to use the property as a primary residence then, at the Closing, and as a condition thereto, Seller shall furnish to
Buyer an affidavit, in a form and substance acceptable to Buyer, signed under penalty of perjury containing Seller's United
States Social Security and/or taxpayer identification numbers and a declaration to the effect that Seller is not a foreign
person within the meaning of Section "FIRPTA."

19. EXECUTION BY PARTIES.

AGREED TO BY BUYER: AGREED TO BY SELLER:

On This Date_____ On This Date_____

_____
_____
Buyer's Printed Name Seller's Printed Name

_____
_____
Buyer's Signature Seller's Signature

_____
_____
Buyer's Printed Name Seller's Printed Name

_____
_____
Buyer's Signature Seller's Signature

TERMINATION OF OFFER. The above Offer shall automatically terminate on _____ at 5:00 p.m.,
unless withdrawn prior to acceptance or termination.

EARNEST MONEY RECEIPT AND INSTRUCTIONS

Receipt of $_____ Check Cash as Earnest Money Deposit, to be deposited in accordance with
the terms and conditions of PURCHASE PRICE, EARNEST MONEY, AND SOURCE OF FUNDS Paragraph. Broker(s)
acknowledges receipt of Earnest Money and Listing Broker, if applicable, shall deposit said funds in accordance with Paragraph
2 of this Contract. If deposited in an escrow account other than the Listing Broker, the Listing Broker, if applicable, shall provide
a copy of receipt to the Selling Broker.

_____ _____ _____
_____
Date Selling Broker/Associate Signature Date Listing Broker/Associate Signature

_____ _____

(Print Name) Selling Broker/Associate (Print Name) Listing Broker/Associate

_____ _____

Company Name Company Name

_____ _____

Address Phone Address Phone

VERSION 2

OKLAHOMA REAL ESTATE COMMISSION
This is a legally binding Contract;
if not understood seek advice from an attorney
OKLAHOMA UNIFORM CONTRACT

Residential Contract OF SALE OF REAL ESTATE

CONTRACT DOCUMENTS. The Contract is defined as this document with the following attachment(s):
(check as applicable)
____ Conventional Supplemental ___ Single Family Mandatory Homeowners' Association Supplemental
____ FHA Supplemental ___ Condominium Association Supplemental
____ VA Supplemental ___ Townhouse Association Supplemental
____ Assumption/Other ___ Supplemental Addendum
____ Seller Carry ___ _____
Parties . ThE Contract is entered into between:
_____
_____ "Seller"
and **[illegible]** "Buyer".
The Parties' signatures at the end of the Contract, which includes any attachments or documents incorporated by reference, with delivery
to their respective Brokers, if applicable, will create a valid and binding Contract, which sets forth their complete understanding of the
terms of the Contract. The Contract shall be executed by original signatures of the parties or by signatures as reflected on separate
identical Contract counterparts (carbon, photo or fax copies). All prior verbal or written negotiations, representations and agreements are
superceded by the Contract, which may only be modified or assigned by a further written agreement of Buyer and Seller.
Seller agrees to sell and convey by General Warranty Deed, and Buyer agrees to accept such deed and buy the Property described
herein, on the following terms and conditions:
The Property shall consist of the following described real estate located in
_____ County, Oklahoma.
1. LEGAL DESCRIPTION. [illegible]
_____
_____
_____
_____
_____
_____
_____
_____
Property Address City Zip
Together with all fixtures and improvements, and all appurtenances, and all underlying groundwater and rights to use groundwater,
subject to existing zoning ordinances, plat or deed restrictions, utility easements serving the Property, (collectively referred to as
"the Property"); **less and except** all the oil, gas and other minerals associated with oil and gas extraction in and under and that
may be produced from the Property.
2. Purchase Price , Earnest Mone y an d source of fun ds. This is a CASH TRANSACTION unless a Financing

Supplement Agreement is attached. The Purchase Price is $_____
payable by Buyer as follows:
Buyer has paid $_____ as Earnest Money on execution of the Contract, and Buyer shall pay the
balance of the purchase price and Buyer's Closing costs at Closing. Upon execution of the Contract, the Earnest Money shall
be deposited in the trust account of _____or if left blank, the Listing Broker's trust
account, as part payment of the purchase price and/or closing costs. If interest accrues on Earnest Money Deposit in Listing
Broker's trust account, said interest shall be paid to "Oklahoma Housing Foundation".

3. **Closing , FUNDING AND Posesion** . The Closing process includes execution of documents, delivery of deed and
receipt of funds by Seller and shall be completed on or before
_____, ("Closing
Date") or not later than _____ days (five [5] days if left blank) thereafter caused by a delay
of the Closing process, or such later date as may be necessary in the Title Evidence provision (reference Paragraph 10 D and
E). Possession shall be transferred upon conclusion of Closing process unless otherwise provided below:

_____
_____.

In addition to costs and expenses otherwise required to be paid in accordance with terms of the Contract, Buyer shall pay
Buyer's Closing fee, Buyer's recording fees, and all other expenses required from Buyer. Seller shall pay documentary
stamps required, Seller's Closing fee, Seller's recording fees, if any, and all other expenses required from Seller. Funds
required from Buyer and Seller at Closing shall be either cash, cashier's check or wire transfer.

4. ACCESSORIES, EQUIPMENT AND SYSTEMS. The following items, if existing on the Property, unless otherwise excluded,
shall remain with the Property at no additional cost to Buyer:

- Attic and ceiling fan(s)
- Bathroom mirror(s)
- Other mirrors, if attached
- Central vacuum & attachments
- Floor coverings, if attached
- Key(s) to the property
- Built-in and under cabinet/counter appliance(s)
- Free standing slide-in/drop-in kitchen stove
- Built-in sound system(s)/speaker(s)
- Lighting & light fixtures
- Fire, smoke and security system(s), if owned

• Shelving, if attached
• Fireplace inserts, logs, grates, doors and screens
• Free standing heating unit(s)
• Humidifier(s), if attached
• Water conditioning systems, if owned
• Window treatments & coverings, interior & exterior
• Storm windows, screens & storm doors
• Garage door opener(s) & remote transmitting unit(s)
• Fences (includes sub-surface electric & components)
• Mailboxes/Flag poles
• Outside cooking unit(s), if attached
• Propane tank(s) if owned
• TV antennas/satellite dish system(s) and control(s), if owned
• Sprinkler systems & control(s)
• Swimming Pool/Spa equipment/ accessories
• Attached recreational equipment
• Exterior landscaping and lighting
• Entry gate control(s)
• Water meter, sewer/trash membership, if owned
• All remote controls, if applicable
• Transferable Service Agreements and Product Warranties

A. Additional Inclusions. The following items shall also remain with the Property at no additional cost to Buyer:

_____
_____
_____
_____

B. Exclusions. The following items shall not remain with the Property:

_____
_____
_____.

5. time perio ds specifie d in Contract . Time periods for Investigations, Inspections and Reviews and Financing Supplement Agreement shall commence on _____ (**Time Reference Date**), regardless of the date the Contract is signed by Buyer and Seller. The day after the Time Reference Date shall be counted as day one (1). If left blank, the Time Reference Date shall be the third day after the last date of signatures of the parties.

6. RESIDENTIAL PROPERTY CONDITION DISCLOSURE. No representations by Seller regarding the condition of Property or environmental hazards are expressed or implied, other than as specified in the Oklahoma Residential Property Condition Disclosure Statement (“Disclosure Statement”) or the Oklahoma Property Condition Disclaimer Statement (“Disclaimer

Statement"), if applicable. A real estate licensee has no duty to Seller or Buyer to conduct an independent inspection of
the Property and has no duty to independently verify accuracy or completeness of any statement made by Seller in the
Disclosure Statement and any amendment or the Disclaimer Statement.

7. INVESTIGATIONS, INSPECTIONS and REVIEWS.

A. Buyer shall have _____ days (10 days if left blank) after the Time Reference Date to complete any investigations,
inspections, and reviews. Seller shall have water, gas and electricity turned on and serving the Property for Buyer's
inspections, and through the date of possession or Closing, whichever occurs first. If required by ordinance, Seller, or
Seller's Broker, if applicable, shall deliver to Buyer, in care of Buyer's Broker, if applicable, within five (5) days after the
Time Reference Date any written notices affecting the Property.

B. Buyer, together with persons deemed qualified by Buyer and at Buyer's expense, shall have the right to enter upon the
Property to conduct any and all investigations, inspections, and reviews of the Property. Buyer's right to enter upon the
Property shall extend to Oklahoma licensed Home Inspectors and licensed architects for purposes of performing a home
inspection. Buyer's right to enter upon the Property shall also extend to registered professional engineers, professional
craftsman and/or other individuals retained by Buyer to perform a limited or specialized investigation, inspection or
review of the Property pursuant to a license or registration from the appropriate State licensing board, commission
or department. Finally, Buyer's right to enter upon the Property shall extend to any other person representing Buyer
to conduct an investigation, inspection and/or review which is lawful but otherwise unregulated or unlicensed under
Oklahoma Law. Buyer's investigations, inspections, and reviews may include, but not be limited to, the following:

1) **D isclosure Statement or Disclaimer Statement unless exempt**
2) **Flood, Storm Run off Water, Storm Sewer Backup or Water History**
3) **Psychologically Impacted Property and Megan's Law**
4) **Hazard Insurance** (Property insurability)
5) **Environmental Risks**, including, but not limited to soil, air, water, hydrocarbon, chemical, carbon, asbestos, mold,
radon gas, lead-based paint
6) **Roof,** structural members, roof decking, coverings and related components
7) **Home Inspection**
8) **Structural Inspection**
9) **Fixtures, Equipment and Systems Inspection.** All fixtures, equipment and systems relating to plumbing
(including sewer/septic system and water supply), heating, cooling, electrical, built-in appliances, swimming pool,
spa, sprinkler systems, and security systems

10) **Termites and other Wood Destroying Insects Inspection**
11) **Use of Property.** Property use restrictions, building restrictions, easements, restrictive covenants, zoning

ordinances and regulations, mandatory Homeowner Associations and dues
12) **Square Footage.** Buyer shall not rely on any quoted square footage and shall have the right to measure the
Property.
13)
_____
_____

C. Treatments , Repairs and Replacements (tr).
1) **TERMITE Treatments AND OTHER Wood Destro ying INSECTS**. Seller's obligation to pay treatment and
repair cost in relation to termites and other wood destroying insects shall be limited to the residential structure,
garage(s) and other structures as designated in Paragraph 13 and as provided in subparagraph C2b below.
2) **TREATMENTS, Repairs , Replacements an d Reviews .** Buyer or Buyer's Broker, if applicable, within 24 hours
after expiration of the time period referenced in 7A, shall deliver to Seller, in care of the Seller's Broker, if applicable, a copy
of all written reports obtained by Buyer, if any, pertaining to the Property and Buyer shall select one of the following:
a. If, in the sole opinion of the Buyer, results of Investigations, Inspections or Reviews are unsatisfactory, the
Buyer may cancel the Contract by delivering written notice of cancellation to Seller, in care of Seller's Broker, if
applicable, and receive refund of Earnest Money.
OR
b. Buyer, upon completion of all Investigations, Inspections and Reviews, waives Buyer's right to cancel as
provided in Paragraph 7, subparagraph C2a above, by delivering to Seller, in care of Seller's Broker, if applicable,
a written list on a Notice of Treatments, Repairs, and Replacements form (TRR form) of those items to be
treated, repaired or replaced (including repairs caused by termites and other wood destroying insects) that
are not in normal working order (defined as the system or component functions without defect for the primary
purpose and manner for which it was installed. Defect means a condition, malfunction or problem, which is not
decorative, that will have a materially adverse effect on the value of a system or component).
i. Seller shall have _____ days (5 days if blank) after receipt of the completed TRR form from Seller's
Broker, if applicable, to obtain costs estimates. Seller agrees to pay up to $_____ ("Repair
Cap") of costs of TRR's. If Seller, or Seller's Broker, if applicable, obtains cost estimates which exceed
Repair Cap, Seller, or Seller's Broker, if applicable, shall notify Buyer or Buyer's Broker, if applicable, in
writing, within two days after receipt of cost estimates.
If the amount of the TRR's exceed the amount of the Repair Cap, Buyer and Seller shall have _____ days
(3 days if blank) thereafter to negotiate the payment of costs in excess of Repair Cap. If a written agreement is
reached, Seller shall complete all agreed TRR's prior to the Closing Date. If an agreement is not reached within

the time specified in this provision, the Contract shall become null and void and Earnest Money returned to Buyer.
ii. If Seller fails to obtain cost estimates within the stated time, Buyer shall then have _____ days (5 days if blank) to:
a) Enter upon the Property to obtain costs estimates and require Seller to be responsible for all TRR's as noted on Buyer's TRR form, up to the Repair Cap; and,
b) If the amount of the TRR's exceed the amount of the Repair Cap, Buyer and Seller shall have _____ days (3 days if blank) thereafter to negotiate the payment of costs in excess of Repair Cap. If a written agreement is reached, Seller shall complete all agreed TRR's prior to the Closing Date. If an agreement is not reached within the time specified in this provision, the Contract shall become null and void and Earnest Money returned to Buyer.

D . Expiration of Buyer's Right to Cancel Contract .

1) Failure of Buyer to complete one of the following shall constitute acceptance of the Property regardless of its condition:
a. Perform any Investigations, Inspections or Reviews;
b. Deliver a written list on a TRR form of items to be treated, repaired and replaced; or
c. Cancel the Contract within the time periods in Investigations, Inspections or Reviews Paragraph.
2) After expiration of the time periods in Investigations, Inspections and Reviews Paragraph, Buyer's inability to obtain a loan based on unavailability of hazard insurance coverage shall not relieve the Buyer of the obligation to close transaction.
3) After expiration of the time periods in Investigations, Inspections and Reviews Paragraph, any square footage calculation of the dwelling, including but not limited to appraisal or survey, indicating more or less than quoted, shall not relieve the Buyer of the obligation to close this transaction.

E. Inspection of Treatments , Repairs an d Replacements an d final walk -throu gh.

1) Buyer, or other persons Buyer deems qualified, may perform re-inspections of Property pertaining to Treatments, Repairs and Replacements.
2) Buyer may perform a final walk-through inspection, which Seller may attend. Seller shall deliver Property in the same condition as it was on the date upon which Contract was signed by Buyer (ordinary wear and tear excepted) subject to Treatments, Repairs and Replacements.
3) All inspections and re-inspections shall be paid by Buyer, unless prohibited by mortgage lender.

8. RISK OF LOSS. Until transfer of Title or transfer of possession, risk of loss to the Property, ordinary wear and tear excepted, shall be upon Seller; after transfer of Title or transfer of possession, risk of loss shall be upon Buyer. (Parties are advised to address insurance coverage regarding transfer of possession prior to Closing.)

9. acceptance of Propert y. Buyer, upon accepting Title or transfer of possession of the Property, shall be deemed to have
accepted the Property in its then condition. No warranties, expressed or implied, by Sellers, Brokers and/or their associated
licensees, with reference to the condition of the Property, shall be deemed to survive the Closing.

10. TITLE EVIDENCE.

A. Buyer 's Expense . Buyer, at Buyer's expense, shall obtain:

(**Check one)**

Attorney's
Title Opinion, which is not rendered for Title Insurance purposes.

OR

Commitment for Issuance of a Title Insurance Policy based on an Attorney's Title Opinion which is rendered for Title
Insurance purposes for the Owner's and Lender's Title Insurance Policy.

B. Seller 's Expense . Seller, at Seller's expense, within thirty (30) days prior to Closing Date, agrees to make available to
Buyer the following (*collectively referred to as* "*the Title Evidence*"):

1) A complete surface-rights-only Abstract of Title, last certified to a date subsequent to the Time Reference Date, by an
Oklahoma licensed and bonded abstract company;

OR

A copy of Seller's existing owner's title insurance policy issued by a title insurer licensed in the State of Oklahoma
together with a supplemental surface-rights-only abstract last certified to a date subsequent to the Time Reference Date,
by an Oklahoma licensed and bonded abstract company;

2) A current Uniform Commercial Code Search Certificate; and

3) An inspection certificate (commonly referred to as a "Mortgage Inspection Certificate") prepared subsequent to the Time
Reference Date by a licensed surveyor, which shall include a representation of the boundaries of the Property (without pin
stakes) and the improvements thereon.

C. Land or Boundary Survey. By initialing this space _____, Buyer agrees to waive Seller's obligation to
provide a Mortgage Inspection Certificate. Seller agrees that Buyer, at Buyer's expense, may have a licensed surveyor enter
upon the Property to perform a Land or Boundary (Pin Stake) Survey, in lieu of a Mortgage Inspection Certificate, that shall
then be considered as part of the Title Evidence.

D. Buyer to Examine Title Evi dence .

1) Buyer shall have ten (10) days after receipt to examine the Title Evidence and to deliver Buyer's objections to Title to Seller
or Seller's Broker, if applicable. In the event the Title Evidence is not made available to Buyer within ten (10) days prior
to Closing Date, said Closing Date shall be extended to allow Buyer the ten (10) days from receipt to examine the Title
Evidence.

2) Buyer agrees to accept title subject to: (i) utility easements serving the property, (ii) building and use restrictions of
record, (iii) set back and building lines, (iv) zoning regulations, and (v) reserved and severed mineral rights, which
shall not be considered objections for requirements of Title.

E. Seller to Correct Issues With Title (if applicable), Possible Closin g Dela y. Upon receipt by Seller,

or in care of Seller's Broker, if applicable, of any title requirements reflected in an Attorney's Title Opinion or Title Insurance
Commitment, based upon the standard of marketable title set out in the Title Examination Standards of the Oklahoma Bar
Association, the parties agree to the following:
1) Seller, at Seller's expense, shall make reasonable efforts to obtain and/or execute all documents necessary to cure title
requirements identified by Buyer; and

2) Delay Closing Date for _____ days [thirty (30) days if blank], or a longer period as may be agreed upon in writing, to
allow Seller to cure Buyer's title requirements. In the event Seller cures Buyer's objection prior to the delayed Closing Date,
Buyer and Seller agree to close within five (5) days of notice of such cure. In the event that title requirements are not cured
within the time specified in this subparagraph, the Buyer may cancel the Contract and receive a refund of Earnest Money.
F. Upon Closing, any existing Abstract(s) of Title, owned by Seller, shall become the property of Buyer.

11. Taxes , Assessments an d Proration S.

A. The following items shall be prorated to include the date of Closing: (i) General ad valorem taxes for the current
calendar year, if certified. However, if the amount of such taxes has not been fixed, the proration shall be based upon
the rate of levy for the previous calendar year and the most current assessed value available at the time of Closing; and
(ii) Homeowner's Association assessments and dues, if any, based on most recent assessments.
B. The following items shall be paid by Seller at Closing: (i) All special assessments against the Property (matured or
not matured), whether or not payable in installments; (ii) Documentary Stamps; (iii) all utility bills, actual or estimated;
(iv) all taxes other than general ad valorem taxes which are or may become a lien against the Property; (v) any labor,
materials, or other expenses related to the Property, incurred prior to Closing which is or may become a lien against the
Property.
C. At Closing all leases, if any, shall be assigned to Buyer and security deposits, if any, shall be transferred to Buyer.
Prepaid rent and lease payments shall be prorated through the date of Closing.
D. If applicable, membership and meters in utility districts to include, but not limited to, water, sewer, ambulance, fire,
garbage, shall be transferred at no cost to Buyer at Closing.

12. Residential Service Agreement .

(Check One)

A. The Property shall not be covered by a Residential Service Agreement.
B. Seller currently has a Residential Service Agreement in effect on the Property. Seller, at Seller's expense, shall
transfer the agreement with one (1) year coverage to the Buyer at Closing.
C. The Property shall be covered by a Residential Service Agreement selected by the Buyer at an approximate cost of
$_____. Seller agrees to pay $_____ and Buyer agrees to pay the balance.

The Seller and Buyer acknowledge that the real estate broker(s) may receive a fee for services provided in connection with
the Residential Service Agreement.
Buyer acknowledges that a Residential Service Agreement does not replace/substitute Property inspection rights.

13. ADDITIONAl PROVISIONs.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

14. Mediation . Any dispute arising with respect to the Contract shall first be submitted to a dispute resolution mediation
system servicing the area in which the Property is located. Any settlement agreement shall be binding. In the event an
agreement is not reached, the parties may pursue legal remedies as provided by the Contract.

15. BREACH AND FAILURE TO CLOSE.

A. Upon Breach by Seller . If the Buyer performs all of the obligations of Buyer, and if, within five (5) days after the
date specified for Closing under Paragraph 3, Seller fails to convey the Title or fails to perform any other obligations
of the Seller under this Contract, then Buyer shall be entitled to either cancel and terminate this Contract, return the
abstract to Seller and receive a refund of the Earnest Money, or pursue any other remedy available at law or in equity,
including specific performance.

B. Upon Breach by Buyer . If, after the Seller has performed Seller's obligation under this Contract, and if, within five
(5) days after the date specified for Closing under Paragraph 3, the Buyer fails to provide funding, or to perform any
other obligations of the Buyer under this Contract, then the Seller may, at Seller's option, cancel and terminate this
Contract and retain all sums paid by the Buyer, but not to exceed 5% of the purchase price, as liquidated damages, or
pursue any other remedy available at law or in equity, including specific performance.

16. Incurre d Expenses an d Release of Earnest Mone y.

A. Incurre d Expenses . Buyer and Seller agree that any expenses, incurred on their behalf, shall be paid by the party
incurring such expenses and shall not be paid from Earnest Money.

B. Release of Earnest Mone y. In the event a dispute arises prior to the release of Earnest Money held in escrow,
the escrow holder shall retain said Earnest Money until one of the following occur:
1) A written release is executed by Buyer and Seller agreeing to its disbursement;
2) Agreement of disbursement is reached through Mediation;
3) Interpleader or legal action is filed, at which time the Earnest Money shall be deposited with the Court Clerk; **or**

4) The passage of thirty (30) days from the date of final termination of the Contract has occurred and options 1), 2)
or 3) above have not been exercised; Broker escrow holder, at Broker's discretion, may disburse Earnest Money.
Such disbursement may be made only after fifteen (15) days written notice to Buyer and Seller at their last known
address stating the escrow holder's proposed disbursement.

17. deliver y of ACCEPTANCE of offer or counterofer . The Buyer and Seller authorize their respective Brokers,
if applicable, to receive delivery of an accepted offer or counteroffer.

18. NON-FOREIGN SELLER. Seller represents that at the time of acceptance of this contract and at the time of Closing, Seller
is not a "foreign person" as such term is defined in the Foreign Investments in Real Property Tax Act of 1980 (26 USC
Section 1445(f) et. Sec) ("FIRPTA"). If either the sales price of the property exceeds $300,000.00 or the buyer does not
intend to use the property as a primary residence then, at the Closing, and as a condition thereto, Seller shall furnish to
Buyer an affidavit, in a form and substance acceptable to Buyer, signed under penalty of perjury containing Seller's United
States Social Security and/or taxpayer identification numbers and a declaration to the effect that Seller is not a foreign
person within the meaning of Section "FIRPTA."

19. EXECUTION BY PARTIES.

AGREED TO BY BUYER: AGREED TO BY SELLER:

On This Date_____ On This Date_____

_____

_____

Buyer's Printed Name Seller's Printed Name

_____

_____

Buyer's Signature Seller's Signature

_____

_____

Buyer's Printed Name Seller's Printed Name

_____

_____

Buyer's Signature Seller's Signature

TERMINATION OF OFFER. The above Offer shall automatically terminate on _____ at 5:00 p.m.,
unless withdrawn prior to acceptance or termination.

EARNEST MONEY RECEIPT AND INSTRUCTIONS

Receipt of $_____ Check Cash as Earnest Money Deposit, to be deposited in accordance with
the terms and conditions of PURCHASE PRICE, EARNEST MONEY, AND SOURCE OF FUNDS Paragraph. Broker(s)
acknowledges receipt of Earnest Money and Listing Broker, if applicable, shall deposit said funds in accordance with Paragraph
2 of this Contract. If deposited in an escrow account other than the Listing Broker, the Listing Broker, if applicable, shall provide
a copy of receipt to the Selling Broker.

_____ _____ _____

_____

Date Selling Broker/Associate Signature Date Listing Broker/Associate Signature

_____
_____
(Print Name) Selling Broker/Associate (Print Name) Listing Broker/Associate
_____
_____
Company Name Company Name
_____
_____
Address Phone Address Phone

IV. CASE LAW

LIST OF CASES

NO.	TOPIC	CASE	OKLAHOMA CITATION	DECIDED	MANDATE
1	Abandonment Of Condemnation Upon Dismissal	State *ex rel.*Dept. of Transportation v. Minor	2009 OK CIV APP 83	04/21/2009	10/16/2009
2	Validity of Out of State Will Signed by Ward	Lazelle v. Estate Of Crabtree	2009 OK CIV APP 79	06/08/2009	10/08/2009
3	Residential Condition Disclosure Act Compliance	Keeler v. GMAC Global Relocation Services	2009 OK CIV APP 88	06/25/2009	10/16/2009
4	Residential Property Condition Disclosure Act: Real Estate Licensee's Liabity for Unknown Construction Defects	Carbajal v. Safary	2009 OK 57	07/07/2009	
5	Statute Of Repose Or Limitations Application To Defective Improvement To Real Property	Kirby v. Jean's Plumbing Heat and Air	2009 OK 65	09/22/2009	
6	Easement by Necessity	Johnson v. Suttles	2009 OK CIV APP 89	09/29/2009	10/22/2009
7	Anti-Deficiency Statutes' Limits	Bank of Oklahoma v. Red Arrow Marina Sales & Service	2009 OK 77	10/13/2009	
8	Residential Property Condition Disclosure Act: Availability Of Punitive Damages	White v. Lim	2009 OK 79	10/13/2009	
9	Pretermitted Heirs: Impact Of	In The Matter of the Estates Of McClean	2010 OK CIV APP 24	12/04/2009	03/04/2010

	Silence Of Will				
10	Publication Notice Must Be Given In the Newspaper Published In The Same County	Town of Goldsby v. City of Purcell	2010 OK CIV APP 44	01/05/2010	04/15/2010
11	Landlord Liability To Third Parties For Defective Storm Door	Taylor v. Glenn	2010 OK CIV APP 20	01/15/2010	02/19/2010
12	Factors To Consider To Determine If Right To Arbitration Is Waived	Wilco Enterprises, LLC v. Woodruff	2010 OK CIV APP 18	01/22/2010	02/19/2010
13	Right To Appeal From A Denial Of An Exception To A Condemnation Commissioners' Report	State *ex rel.* Dept. of Transportation v. Teal	2010 OK CIV APP 64	02/01/2010	06/17/2010
14	*Idem Sonans* Impact On Publication Notice	Tucker v. New Dominion, LLC	2010 OK 14	02/23/2010	
15	Equitable Subrogation And Homestead Interest	Deutsche Bank National Trust Co. v. Roberts	2010 OK CIV APP 47	03/26/2010	04/22/2010
16	Final Judgment Cannot Be Vacated Absent Defect On Judgment Roll	Rothrock v. Hartley	2010 OK CIV APP 51	04/20/2010	05/21/2010
17	Adverse Possession in Absence of a Fence	Hernandez v. Reed	2010 OK CIV APP 65	05/21/2010	06/17/2010
18	Summary Judgment Cannot	Keith Margerison and Robert McCullough v. Charter Oaks	2010 OK CIV APP 67	05/21/2010	06/17/2010

	Stand In The Face Of Possible Waiver Or Estoppel	Homeowners Association			
19	Lis Pendens Goes Beyond Title Issues	Bock v. Slater	2010 OK CIV APP 90	05/24/2010	09/24/2010
20	Negligence Of Property Owner And Tenant To Invitee	West v. Spencer, et al	2010 OK CIV APP 97	06/04/2010	10/08/2010
21	Arbitration Clause Not Enforceable	Amundsen v. Wright	2010 OK CIV APP 75	06/23/2010	07/23/2010
22	Enforceability Of Non-Compete Clause In USA Loan Against Third Party	Rural Water v. City of Guthrie	2010 OK 51	06/29/2010	

1. **ABANDONMENT OF CONDEMNATION UPON DISMISSAL**

(Dismissal of condemnation, after demanding turnover of possession constitutes abandonment, entitling owner to fees and costs)

STATE ex rel. DEPT. OF TRANSPORTATION v. MINOR, 2009 OK CIV APP 83, 221 P.3d 141 (decided 04/21/2009; mandate issued 10/16/2009)

The Oklahoma Department of Transportation filed a proceeding to condemn certain lands to be taken for a utility easement. A trial date was set and, prior to trial, ODOT paid the purchase funds into court and sent the owner a written demand to quit the premises. The owner removed all his property from the premises and gave up possession by vacating it.

At the pretrial conference the court denied ODOT's request to submit a revised construction plan which would lessen the damages due to the owner. Rather than face

trial based on the original construction plan, ODOT dismissed the proceeding 5 days before the date set for trial. ODOT then filed a eminent domain proceeding to take the same land but using the new construction plan, hoping for a lower award of damages.

The trial court awarded to the owner his attorney, appraisal and engineering fees and costs incurred in the first proceeding, based on a finding that ODOT had "abandoned" its action.

On appeal, the Oklahoma Court of Appeals held that dismissal alone is insufficient to support a claim of abandonment. However, because ODOT sent a demand for the owner to vacate the premises and the owner complied, then, even though ODOT asserted, in response, that they did not take possession, ODOT was held to have "abandoned" its taking. Consequently, ODOT was liable for trial and appeal related attorney, appraisal and engineering fees and costs.

2. **VALIDITY OF OUT OF STATE WILL SIGNED BY WARD**

(A will executed by a decedent placed under a guardianship in Oklahoma can execute a will in Arizona in compliance with Arizona law)

LAZELLE v. ESTATE OF CRABTREE, 2009 OK CIV APP 79, 225 P.3d 11 (decided 06/08/2009; mandate issued 10/08/2009):

In 2003 a person was placed under a guardianship for dementia and ill health in Oklahoma, and, with belated court approval, was moved by the brother/guardian to Arizona to an assisted living ranch to be close to the brother/guardian. The ward's horse was kept with him at the ranch. In 2004, the ward executed a will in Arizona making his brother/guardian his personal representative and excluding a sister who was a beneficiary and the personal representative in the prior will. In 2006, the ward became terminally ill

and requested to be buried in Oklahoma by his wife. In 2006, the ward moved back to Oklahoma to a nursing home where he died and was buried by his wife in May 2006.

The decedent had no surviving spouse or children. The guardian sought to admit the will in Oklahoma, to be appointed as personal representative, and to determine heirs. The sister contested the will and sought to have herself appointed as the personal representative.

The trial court ruled in favor of the guardian, and the sister appealed.

The appellate court affirmed the trial court and ruled: (1) the ward was a resident of Arizona at the time of execution of the will, because he was moved there with court approval, making Arizona's law applicable to use to determine the validity of the will, (2) the will, which was executed in Arizona, was valid because the ward was lucid at the time of execution and because Arizona law (contrary to Oklahoma law) does not require a ward to execute a will in front of a judge), and (3) undue influence in the execution of the will was not proved.

3. **RESIDENTIAL CONDITION DISCLOSURE ACT COMPLIANCE**

(A seller who never occupied the residence is not liable for undisclosed defects in the house where the seller failed to provide the Disclosure Form, required by statute, but had no knowledge of any defect)

KEELER v. GMAC GLOBAL RELOCATION SERVICES, 2009 OK CIV APP 88, 223 P.3d 1024 (decided 06/25/2009; mandate issued 10/16/2009):

A residential buyer contracted to purchase a house currently owned by GMAC Relocation Assistance Company, which had purchased a home from its occupants as part of a relocation service. The Oklahoma Residential Property Condition Disclosure Act

requires any seller to provide to the buyer, before the purchase contract is signed, with a Disclosure Statement or a Disclaimer Statement. The Disclosure Statement discloses any actual knowledge the seller possesses concerning the condition of the land, the structure, and its operating systems. If the sellers have not occupied the premises, they would execute a disclaimer disclosing that fact, but also advising that they did not know of any adverse conditions.

The GMAC company had never occupied the premises, and they provided the following documents to the buyers: (1) the previous owner's 3-month old Disclosure Statement (it is current if less than 6 months old), showing no defects, (2) the previous owner's inspection reports, showing no defects, (3) a GMAC Homeowner Disclosure Statement, stating GMAC never occupied the premises and makes no representations about its condition, (4) GMAC's Inspection Rider to Purchase Agreement, signed by buyers, and stating that GMAC makes no representations as to the condition of the property and that buyers will conduct their own inspections, (5) a "Hold Harmless Release" signed by the buyers at closing, accepting the property "as is", and releasing GMAC from any liability for the condition of the property.

The buyers failed to conduct any inspections before closing. After closing, the buyers discovered termite damage and repairs of termite damage. The buyers sued GMAC as the sellers asserting liability under the Condition Act because (1) GMAC failed to sign and provide either the Disclosure or Disclaimer forms, and (2) GMAC allegedly hid known termite damages.

The trial court granted GMAC's motion for summary judgment, and on appeal to the Court of Civil Appeals, the appellate court affirmed the trial court.

After discussing the multiple disclosures, disclaimers, reports, and release exchanged between the parties, and after stating that such forms provided the exact same information that a formal Disclosure form would have disclosed, the appellate court held that even if GMAC failed to provide the required statutory form, there was no evidence of GMAC having any knowledge of any property defects.

4. **RESIDENTIAL PROPERTY CONDITION DISCLOSURE ACT: REAL ESTATE LICENSEE'S LIABITY FOR UNKNOWN CONSTRUCTION DEFECTS**

(Buyers' real estate licensee not liable to buyers for unknown construction defects)

CARBAJAL v. SAFARY, 2009 OK 57, 216 P.3d 289 (decided 07/07/2009; mandate issued ___):

Before the buyers signed the real estate purchase contract, the buyers' real estate licensee received an engineering report which disclosed some minor foundation settling issues, but which concluded "There are no structural requirements at this residence." The licensee did not provide a copy of this report to the buyers, but verbally stated that the report was "clean". The sellers' disclosure statement also reflected that the sellers "were not aware of any defects in the structural integrity of the home." The sales price was $86,000.00 and, after the buyers took possession, the buyers discovered that there were "profound structural and foundation problems" which were estimated to cost $70,000.00 to repair.

The buyers sued their licensee for failure to discover and to disclose such defects.

The trial court granted the licensee's motion for a directed verdict at the end of the buyers'/plaintiffs' presentation of evidence at a bench trial. The trial court failed to give any reason for its decision.

The Court of Civil Appeals affirmed the trial court's dismissal holding that the engineer's report did not contain any information sufficient to raise concerns about the home's foundation.

On Certiorari the Supreme Court vacated the opinion of the Court of Civil Appeals but still affirmed the trial court's decision dismissing the buyers' action. The Supreme Court accepted the Court of Civil Appeals' conclusion that there was no violation of the Act's requirement for the licensee to disclose any "defect" known to the licensee but not disclosed by the sellers' disclosure statement. It explained that to constitute a "defect" under the Act, it must be "a condition, malfunction or problem that would have a materially adverse effect on the monetary value of the property, or that would impair the health or safety of future occupants of the property." According to the Supreme Court, the content of the engineer's report, referring to minor issues but making no requirement for any corrective action -- which the licensee failed to deliver to the buyers before the closing – did not disclose such a "defect".

[Author's note: In the future, the licensee could avoid such allegations about the content of the undisclosed engineer's report by simply providing it to the buyer instead of trying to give a verbal summary of its contents.]

5. **STATUTE OF REPOSE OR LIMITATIONS APPLICATION TO DEFECTIVE IMPROVEMENT TO REAL PROPERTY**

(Replacement of a residential sanitary sewer constitutes an "improvement to real property" and not just "maintenance" or "repairs", and, consequently, (1) the 10-year statute of repose extinguishes a negligence claim, and (2) the 5-year statute of limitation bars a contract breach claim, and (3) the "discovery rule" (which

applies to the statute of limitation) does not extend the 10-year repose statute.)

KIRBY v. JEAN'S PLUMBING HEAT AND AIR, 2009 OK 65, 222 P.3d 21 (decided 09/22/2009; mandate issued __/__/____)

Under a contract with the home owner/Plaintiff, the Defendant installed a replacement sanitary sewer for a residence Over 10 years after the completion of the installation of the sewer, the sewer line failed causing a sewage back up with related damage to personal property. The owner sued the installation company for negligent installation and breach of contract.

The trial court granted the Defendant's motion fo dismissal because of the passage of both the 10-year statute of repose (12 O.S. §109), for "improvements to real property:" and the 5-year statute of limitation (12 O.S. §95), for breach of contract.

The Court of Civil Appeals affirmed the trial court, and the Oklahoma Supreme Court vacated the Court of Civil Appeals decision but affirmed the trial court.

The Oklahoma Supreme Court (1) explained a sewer line is immovable and, therefore, is "real property", and the "replacement" of an entire sanitary sewer does not constitute "maintenance" or "repairs", but is an "improvement to real property", bringing a related negligence claim under the 10-year statute of repose, and (2) explained the development of the distinction between a "statute of limitation" (ending the right to relief because of a delay in seeking a remedy) and a "statute of repose" (extinguishing the right itself, even before the claim arose) and ruled that the "discovery rule", which would extend a statute of limitation, will not be applied to defeat a statute of repose.

6. **EASEMENT BY NECESSITY**

(Easement by necessity (a) does not require immediate grant from same owner, but

allows title to be traced to common distant owner, (b) does not require existence of use when title severed, but only lack of access, and (c) does not require absolute lack of alternative access, but only lack of alternative reasonably affordable access.)

JOHNSON v. SUTTLES, 2009 OK CIV APP 89, ___ P.___ ____ (decided 09/29/2009; mandate issued 10/22/2009):

Owner of land divided by a large stream into a northern and southern tract accessed the northern tract by using an oil field service road across his neighbor's land to the north. The two owners did not acquire their interests from a common owner, but from different owners who were intermediate owners from a common owner. The service road did not exist when the current two parties initially acquired their respective interests. The owner of the land-locked property could build a bridge, at a cost of 50% of the cost of the entire tract. The oil company is required to remove the service road when the well is closed. The owner of the northern tract locked the gate across the oil service road thereby denying access to the neighbor to the south, to the southern neighbor's northern half.

The land-locked neighbor to the south sued for an easement by necessity.

The trial court granted the easement by necessity due to (a) there being common ownership of the two tracts, albeit distant through different intermediate owners, (b) the existence of such need at the time of the original severance from the common owner, although no such use was then in existence, and (c) the need only had to be the more reasonable (i.e., cheaper) alternative means to gaining access, with little detriment to the losing party, rather than being an absolute need.

The Court of Civil Appeals affirmed. In addition, the Court of Civil Appeals

remanded the case to allow the trial court (1) to order the oil company (who was not a party to the case) to keep the service road in tact when the well is closed, and (2) to create a metes and bounds legal description for the roadway easement.

[Author's comment: This balancing of the cost between two landowners makes the decision turn on how much the claimant paid for the land-locked property. This approach ignores the inherent fact that such lower price was probably due — in part -- to such inaccessibility; thus allowing the buyer of the land-locked land to create the facts needed to demand access across a neighbor's land. Such a result is inequitable. In addition, existing case law holds that a journal entry – like this one -- which fails to provide a legal description for an easement is not a final order and is not appealable.]

7. **ANTI-DEFICIENCY STATUTES' LIMITS**

(Lender's failure to seek deficiency in a real estate mortgage foreclosure action, does not preclude lender's enforcement of a guaranty for such deficiency, and does not preclude lender's continued pursuit of a claim for fraud in the inducement against the debtor, the guarantor, and third parties.)

BANK OF OKLAHOMA v. RED ARROW MARINA SALES & SERVICE, 2009 OK 77, 224 P.3d 685 (decided 10/13/2009; mandate issued _____):

As part of a mortgage foreclosure action, the lender/plaintiff included actions for enforcement of a guarantee and for damages for fraud in the inducement against the debtor, the guarantor and a third party. The foreclosure resulted in an order of sale of the real estate, and, after the sale was concluded, leaving a significant portion of the debt unsatisfied, the lender sought to proceed on its remaining claim on the guarantee and on its assertions of fraud. The loan was for $1,400,000.00 and the sale produced

$280,000.00 after 8 sales.

The trial court granted all of the defendants' motions for summary judgment exonerating them of any possible liability under the guarantee or under a fraud claim, due to the lender's failure to timely pursuing a deficiency under 12 O.S. Section 686.

The Court of Civil Appeals held that while the lender's failure to reassert the fraud claim against the debtor did preclude the trial court from considering such claim, that, as to the other defendants, the claims on the guarantee and the claims for fraud should proceed. The language of the guarantee waived any defense arising from the lender's failure to seek a deficiency against the debtor, even if such failure harmed the guarantor by preventing him from recovering anything from the debtor.

The Supreme Court affirmed the trial court and Court of Civil Appeals, with extensive discussion of why the anti-deficiency statute was unconnected with any issues concerning the guarantee or the fraud claim. The Supreme Court noted that the measure of damages between the fraud claim and the deficiency judgment are different, with the fraud claim seeking to "recover the difference between the actual value of the property encumbered by mortgage and the security value it would have received had that value been exactly as represented." (¶23)

8. **RESIDENTIAL PROPERTY CONDITION DISCLOSURE ACT: AVAILABILITY OF PUNITIVE DAMAGES**

(Punitive damages are not available for providing misinformation on the condition of residential real property.)

WHITE v. LIM, 2009 OK 79, 224 P.3d 679 (decided 10/13/2009; mandate issued _____):

The buyers sued the sellers and the real estate licensees for failure to disclose substantial termite damage in the required disclosure statement under the Residential Property Condition Disclosure Act (60 O.S. Section 831 et seq). The buyers sought recovery of both actual damages and punitive damages as well. As part of their pursuit of punitive damages the buyers conducted discovery seeking access to the defendants' tax returns.

The trial court granted the requested demand for access to the defendants' tax returns. In addition, the trial court denied the defendants' motions for partial summary judgment wherein the defendants sought a ruling that the plaintiffs were limited to recovery of actual and not punitive damages. The trial court also denied the defendants' subsequent request for the trial court to reconsider its denial of the defendants' motions for partial summary judgment. This order was certified for immediate appeal.

The Supreme Court accepted Cert and issued a ruling reversing the trial court and concluding that the legislature's amendment of the Act to expressly preclude the recovery of punitive damages made such issue perfectly clear, after an earlier ruling that the (unamended) Act did not preclude pursuit of punitive damages for fraud and misrepresentation.

[Author's note: An unexplored issue is briefly mentioned by the Supreme Court but not resolved: "Petitioners neither intimate nor argue that the legislative exclusion from recovery of exemplary damages rests on some constitutional infirmity."(¶9) This potential argument is left for consideration another day.]

9. **PRETERMITTED HEIRS: IMPACT OF SILENCE OF WILL**

(Oklahoma law does not allow admission of extrinsic evidence to show intent to omit

pretermitted heir)

IN THE MATTER OF THE ESTATES OF McCLEAN, 2010 OK CIV APP 24, 231 P.3d 27 (decided 12/04/09; mandate issued 03/04/2010):

The deceased. Beulah McClean, had two children, a daughter and such daughter's daughter (the deceased's grandchild) and a son, with three children. The daughter and granddaughter predeceased Beulah. Beulah's son predeceased Beulah but left three children. Beulah executed her will in Texas and devised all of her estate (consisting of certain minerals and the related surface title located in Oklahoma) to two nephews. Her will was silent as to her own two children.

The will was admitted in Oklahoma to probate. The three children of the omitted son sought to claim all of the estate of Beulah as the offspring of a pretermitted heir (84 O.S. Section 132). The nephews sought to introduce a video taken during the execution of Beulah's will wherein she expressed an intent to omit her son from her will.

At trial it was held that while Texas law might allow the introduction of extrinsic evidence to establish such intent to omit a child if there is a latent ambiguity in a will (meaning such ambiguity is not visible on the face of the will itself), Oklahoma law does not. Because the land is located in Oklahoma, under 84 O.S. Section 20, Oklahoma law is the applicable law. The trial court went on to hold that there was not a patent ambiguity on the face of the will. Consequently, the silence of the will as to Beulah's son means "Beulah is deemed to have died intestate as to [her son], and [her son] is Beulah's pretermitted heir. [Her son's] surviving offspring are consequently Beulah's sole and only heirs at law."

The Court of Civil Appeals affirmed.

10. **PUBLICATION NOTICE MUST GIVEN BE IN THE NEWSPAPER PUBLISHED IN THE SAME COUNTY**

(Whether a newspaper is "published" in a county is based on: where it is mailed from, where it has it principal offices, and where the determination is made of its form and content)

TOWN OF GOLDSBY v. CITY OF PURCELL, 2010 OK CIV APP 44, 233 P.3d 409 (decided 01/05/2010; mandate issued 04/15/2010)

Two towns located in McClain County sought to annex the same lands. One (Town of Goldsby) gave publication notice in a timely fashion in the Purcell Register which is admittedly published in McClain County, while the other (Purcell) gave timely notice in the Oklahoman. (Purcell later on gave notice in the Purcell Register, but it was not far enough ahead of the municipality's meeting to constitute timely notice.) Both cities adopted resolutions at their respective meetings annexing the same land, with Purcell's resolution predating Goldsby's.

Goldsby filed a declaratory action asking for a finding that Purcell's annexation was void for lack of proper and timely notice, while confirming that Goldsby's annexation was valid.

The trial court held, and the Court of Civil Appeal affirmed, that a newspaper can be used for giving legal publication notice only if it is published in the county of the action. If a county fails to have a newspaper published in it, then a newspaper which is published in an adjacent county can be used, if it has circulation in the county where the matter is being considered.

The applicable statute was changed in 1983 from requiring that the newspaper be

"printed" in the county to being "published" in the county.

The trial court and the appellate court followed the ruling of an Oklahoma Attorney General's Opinion which determined that a newspaper is published "where the newspaper is disseminated by admission to the mails and has its principal offices and where its form and content is determined." (2002 OK AG 10)

Accordingly, the appellate court noted that "It is undisputed that the Oklahoman has no production facilities or public office in McClain County, that the Oklahoman is not edited, or its content determined in McClain County, and that the Oklahoman's principle [sic] office is located in Oklahoma City." It then held "The Oklahoman is not published in McClain County, and cannot be a legal newspaper in McClain County because the Purcell Register is published there."

The trial court and appellate courts ruled on the related question as to the impact on the Purcell annexation resolution if the notice of the meeting where such resolution was to be approved is improperly published. The two courts held that such resolution, and the resulting annexation by Purcell, was void. Consequently, Goldsby's annexation was valid and Purcell could not, by a later resolution, annex such land.

11. **LANDLORD LIABILITY TO THIRD PARTIES FOR DEFECTIVE STORM DOOR**

(Landlord has no common law duty to a third party to provide and maintain a secondary door to prevent a tenant's dog from pushing a door into the mailman who consequently fell and suffered injury, and sued the landlord and tenant)

TAYLOR v. GLENN, 2010 OK CIV APP 20, 231 P.3d 765, (decided 01/15/2010; mandate issued 02/19/2010)

When a mailman sought to deliver mail and was knocked down by the tenant's dog jumping on the glass storm door and pushing it into the mailman. The mailman suffered a broken arm and sued the landlord and the tenant. The mailman asserted a claim for negligence. The opinion fails to advise what happened to the claim against the tenant.

[The glass storm door allegedly had a defective latch, but the trial court fails to discuss the veracity of that assertion.]

Finding there was no duty to third parties, the trial court granted the landlord's motion for summary judgment. The judgment was certified, and, on appeal, the Court of Civil Appeals, affirmed.

The Appellate Court reviewed earlier landlord duty cases: one involving a raped tenant who won because of a defective lock (after demand by the tenant to fix it) and because the assault was by a "known" dangerous staff person; and another case where a next door neighbor sued the landlord and lost where a tenant's defective fence allowed the tenant's dog to escape and injure the neighbor's child but there was no obligation in the lease to provide and maintain a fence, and the lease prohibited a dog (without landlord approval, which was proven to have been sought or given). In this second case, it was found there was no duty to protect a third party.

In the extant case, the terms of the lease did not require the landlord to provide or maintain a secondary (glass storm) door, and it prohibited the tenant from having a dog. In addition, the appeal court held that there was no common law duty by a landlord to third parties to provide a secondary door.

12. **FACTORS TO CONSIDER TO DETERMINE IF RIGHT TO**

ARBITRATION IS WAIVED

(A right to demand arbitration which is expressly provided in a residential construction contract is enforceable especially where there is an anti-waiver provision and where the six factors showing waiver are not all met)

WILCO ENTERPRISES, LLC v. WOODRUFF, 2010 OK CIV APP 18, 231 P.3d 767 (decided 01/22/2010; mandate issued 02/19/2010)

A builder filed a mechanics and materialman's lien for unpaid work on a house, and subsequently filed a foreclosure action in a timely manner. The homeowner defendant filed a counterclaim (and third party claims) in the foreclosure action. 10 weeks after filing a standard answer denying the counterclaims, the Plaintiff filed a motion to compel arbitration as to the counterclaims, based on an arbitration clause in the residential construction agreement.

The trial court held that a court-created six factor test survived the enactment of the new Arbitration Act. It further held that due to its analysis of those six factors (discussed below) Plaintiff had waived its right to compel arbitration.

On appeal, the Oklahoma Court of Civil Appeals agreed that the new Arbitration Act was silent on the criterion to use to decide whether a party had waived it right to compel arbitration, thereby leaving the court-created six factor test in place. However, upon the Appellate Court's application of the six factors to the extant facts, it reversed the trial finding that none of the factors were met, and, consequently, ordered arbitration.

The Appellate Court started its analysis by noting "this State's strong public policy in favor of arbitration". When analyzing the six factors the Appellate Court found (1) the Plaintiff's actions were consistent with a right to arbitrate, in large part because

the contract expressly allowed foreclosure of its lien, (2) there had not been significant preparation for litigation, before the party asserted its right to arbitration (one set of discovery had been served by the Plaintiff on the Defendant, but, under the new Arbitration Act discovery is allowed, and the Defendant never answered them anyway), (3) there was no trial date set and there was not a long delay in asserting the right to arbitration (the Plaintiff sought arbitration just 10 weeks after the Defendant filed her counterclaims), (4) there was no obligation on the Plaintiff to invoke its right to arbitration when its foreclosure action was initiated because such right to foreclose was exempted from the arbitration process, (5) the original fifth factor, concerning whether the party requesting arbitration had conducted discovery, was no longer relevant in the face of the new Arbitration Act which allowed discovery in arbitration, and, in any case, there had not been substantial discovery undertaken, and (6) there was no showing that there would be prejudice to the person opposing the arbitration, if such arbitration is allowed.

13. **RIGHT TO APPEAL FROM A DENIAL OF AN EXCEPTION TO A CONDEMNATION COMMISSIONERS' REPORT**

(Where the trial court denies an Exception to a Condemnation Commissioners' Report where the Exception relates the measure of damages and not to the right to take, and where both parties ask for a jury trial, the order denying the Exception is not subject to appeal)

STATE ex rel. DEPT. OF TRANSPORTATION v. TEAL, 2010 OK CIV APP 64, ___ P.__ ___ (decided 02/01/2010; mandate issued 06/17/2010)

In 1941 landowners granted to ODOT an easement for a highway. The

landowners continued to own lands adjacent to the highway, and, because the design of the highway constructed under the 1941 easement did not include a separating curb or other barrier between the highway and their remaining lands, the landowners gained access to their remaining lands across the highway right of way and parked on the right of way.

In 2006, ODOT initiated a condemnation action to take the fee simple to the highway lands covered by the 1941 easement. The new 2006 highway design included a curbing which would prevent the landowners from subsequently using the right of way for access to their remaining lands or for parking. After the Commissioners issued their Report on their valuation of the fee simple taking, neither party objected to the Report, and ODOT demanded a jury trial.

After ODOT conducted discovery deposing the landowners' appraisal expert, ODOT file a motion in limine to exclude such expert's testimony which included damages for the landowners' loss of access and loss of parking. The trial court granted such motion in limine and, on the landowner's motion, granted a request for the Commissioner's to prepare an Amended Report considering the trial court's decision to exclude any damages for the loss of access and parking. The Amended Report contained the same valuation, and, without certifying the decision, the landowners appealed the denial of their Exception on the measure of damages.

The Court of Civil Appeals dismissed the appeal as premature. The decision was not certified for immediate appeal. If the Exception that was denied had related to the right to take, it would have been subject to appeal as a matter of right; however, it related to the measure of damages. Also, both parties demanded a jury trial, thereby making the

Commissioners' Report moot, since it could not be offered at trial. The proceeding had not gone to trial on valuation and, therefore, was not a final order. The issue as to whether at the jury trial the proper measure of damages had been used would be subject to appeal afterwards.

The appeal was dismissed as premature.

[Author's Comment: Certain relevant facts were not disclosed in the court's discussion of the case. It is left unclear whether in the initial easement, there was a designation of "limits of access" prohibiting such access and parking. If the initial easement failed to create such limits, then such "rights" were arguably being taken in the later proceeding, and should be included in the measure of damages.]

14. ***IDEM SONANS* IMPACT ON PUBLICATION NOTICE:**

(Similar sounding and appearing names give adequate publication notice in a forced pooling Corporation Commission action)

TUCKER v. NEW DOMINION, LLC, 2010 OK 14, 230 P.3d 882 (decided 02/23/2010; mandate issued _____):

An oil company, Old Dominion, sought to force pool an unleased oil/gas interest through a forced pooling action before the Corporation Commission. The mineral interest was owned by "Olinka Hrdy". She was deceased but her probate failed to include the subject mineral interest, so there was not any notice in the land records of such probate action. The oil company gave notice in the pooling action using publication notice and used the name "Olinka Hardy" (rather than "Hrdy"). When the probate court was advised of the oversight that omitted the mineral interest, it issued a *nunc pro tunc* order distributing the subject minerals to Johnson, who promptly leased the minerals to

Tucker. Thereafter, Tucker advised Old Dominion of his claim of interest demanding an accounting and being allowed to "participate" in the well, rather than simply receiving a leasing bonus and a royalty.

The trial court held that under the concept of *idem sonans* combined with the visual appearance of the name ("Olinka Hrdy" vs. "Olinka Hardy") plus the unusual nature of the first name as well, resulted in a conclusion that no one would be misled into thinking anyone but the right person was being given notice.

The Court of Civil Appeals reversed holding that Old Dominion failed to prove that the two names sounded alike, and remanded the case to the trial court for further proceedings.

The Supreme Court held that "The Commission when issuing orders is functioning in an adjudicatory capacity. [cites omitted] The Commission's adjudicatory function is comparable to a court's. [cites omitted] Constitutional due process requirements governing notice apply to Commission adjudicatory proceedings in the same force and quality as to judicial proceedings." (¶13)

The Supreme Court held that due to similar sounds, visual similarity, combined with a description of the land made it clear that no one would have been misled. Therefore, the Supreme Court concluded "The publication notice here met the requirements of due process. Ms. Hrdy [the deceased] and the plaintiffs [her heir/devisee, and his devisee] had constructive notice of the Commission proceedings and, thus, were bound by the Commission's pooling order." (¶21)

15. **EQUITABLE SUBROGATION AND HOMESTEAD INTEREST**

(Refinancing note signed by husband alone, with husband's signature and wife's

forged signature on the substitute mortgage of the homestead is enforceable under equitable subrogation)

DEUTSCHE BANK NATIONAL TRUST CO. v. ROBERTS, 2010 OK CIV APP 47, 233 P.3d 805 (decided 03/26/2010; mandate issued 04/22/2010):

A couple took out a purchase money mortgage to purchase their homestead, and the couple refinanced it later. Thereafter, the husband alone refinanced it again signing the note without his wife's signature, accompanied with a new mortgage signed by the husband and signed by an impersonator of the wife, without the wife's knowledge. Shortly thereafter, the husband died and when the note eventually went into default, the wife asserted that she had no liability on the note which she did not sign and the mortgage were void due to the absence of her own signature on the mortgage of the homestead. The lender asserted equitable subrogation because the proceeds of the refinance paid off the earlier note and mortgage.

The trial court found that the wife did not sign the latest note or mortgage, and, consequently, she had no responsibility on the note, and that the mortgage was void. However, it also held that in equity she was bound under the doctrine of equitable subrogation. In the absence of such a rule, she would receive a windfall by the debt being extinguished while she keeps the house without repaying the bank for the loan which was use to purchase it. The assertion by the wife that her homestead claim trumped the concept of equitable subrogation was rejected, and the language of the constitution was invoked to confirm that a purchase money mortgage does not even need both spouse's signature.

16. **FINAL JUDGMENT CANNOT BE VACATED ABSENT DEFECT ON**

JUDGMENT ROLL

(Vague allegations of failure to undertake adequate effort to locate publication notice defendant are inadequate to overturn a final judgment)

ROTHROCK v. HARTLEY, 2010 OK CIV APP 51, 233 P.3d 810 (decided 04/20/2010; mandate issued 05/21/2010):

Publication notice was relied on in a quiet title action and a decision was entered in 1993 based on such notice. The heir of the losing party asserted in a suit filed in 1997 that the decision was void because such publication notice was obtained through fraud, because, in some undefined way, the attempt to locate and serve the defendant was inadequate. The heir asserted (1) the 1993 decision was void due to lack of jurisdiction, (2) the 1993 decision was obtained by fraud because the affidavit supporting publication notice was "untrue", and (3) the trial court, in the later 1997 lawsuit committed error when it failed to accept evidence supporting its argument.

The trial court dismissed the 1997 action, with prejudice, because (1) the petitioner failed to show there was any defect in service visible on the face of the judgment roll, (2) the statutes of limitations had run for fraud or other improper means being used to obtain the judgment, and (3) the petitioner failed to make an offer of proof and thus failed to preserve the record for appeal as to any extrinsic evidence.

The Court of Civil Appeals affirmed.

17. **ADVERSE POSSESSION IN ABSENCE OF A FENCE.**

(Adverse possession or acquiescence cannot be established absent proof of enclosure of the land denying access to the public and to the record owner)

HERNANDEZ v. REED, 2010 OK CIV APP 65, ___ P.__ ___ (decided 05/21/2010;

mandate issued 06/17/2010):

Two adjacent land owners had a ten foot easement straddling their rear fence line. The plaintiff fenced in his portion of his lot except for the rear five foot easement plus another 3.4 feet between the edge of the easement and the fence. The general area of the 10 foot easement was open as an alley and was used by the public, and the plaintiff has a gate into the alley. Defendant generally maintained the alley way by mowing it and using it for a changing variety of uses, such as for a dog run, and for a play ground set, for a period of substantially over 15 years.

Just before filing suit to quiet title, the plaintiff sent demands to defendant to cease certain uses of the alley and to sign a quit claim deed to plaintiff, which plaintiff refused to do. Plaintiff sued to quiet its record title.

The trial court confirmed title in the plaintiff and also granted to plaintiff attorney fees under the Nonjudicial Marketable Record Title Act.

The Court of Civil Appeals affirmed the judgment quieting title in the plaintiff record title holder due to the defendant's inability to establish his exclusive possession of the premises. Also, the award of attorney fees to the prevailing party was reversed due to the absence of any instrument clouding the plaintiff's title. The conflicting claim was based on adverse possession rather than an instrument, making the Act inapplicable.

18. **SUMMARY JUDGMENT CANNOT STAND IN THE FACE OF POSSIBLE WAIVER OR ESTOPPEL**

(Homeowners Association may be bound by waiver or estoppel concerning approving and not objecting to the placement of a gate in their exclusive neighborhood perimeter fencing, where such gate existed over a long period and

was approved by the Association)

MARGERISON v. CHARTER OAK HOMEOWNERS ASSOCIATION., 2010 OK CIV APP 67, ___ P.___ ___ (decided 05/21/2010; mandate issued 06/17/2010):

The owner of a perimeter lot had a gate in the fence allowing access to an adjacent public part. Such fence is located in an exclusive easement in favor of the homeowner's association. The gate existed in the fence when the lot owner acquired the lot, and the Association approved the lot owner's request to be able, at his own expense, to replace the gate when the Association replaced the whole fence. The long term presence of the gate might support estoppel, and the affirmative approval of the installation of a replacement gate might establish waiver.

The trial court granted summary judgment to the Association declaring that no gate was permitted in the Association's exclusive easement around the neighborhood containing a fence.

The Court of Civil Appeals reversed the trial court finding there were disputes of fact as to whether waiver or estoppel occurred.

19. **LIS PENDENS GOES BEYOND TITLE ISSUES**

(Lis Pendens filing is appropriate where the plaintiff files a derivative action seeking to prevent defendant from conveying title, where defendant has such power)

BOCK v. SLATER, 2010 OK CIV APP 90, ___ P.__ ___ (decided 05/24/2010; mandate issued 09/24/2010):

Plaintiff investors filed a lawsuit in Oklahoma concerning a hotel in Oklahoma and another hotel in Florida. The relief being sought included "damages, recission of hotel management contracts, an accounting, the imposition of a constructive trust, the

appointment of a receiver, and an injunction preventing further alleged misappropriation, waste, and abuse of remaining assets." The action was, in essence, against the two corporations owning the two hotels.

The hotels sought to have the lis pendens released because they were jeapordizing sales of the hotels.

The trial court dismissed the lis pendens notice because the action did not involve title to real estate.

The Court of Civil Appeals ruled that the matter should be remanded to the trial court to determine whether real property was involved and which side was favored by the balancing of equities.

The trial court, on remand, decided in favor of the plaintiffs.

On subsequent appeal, the Court of Civil Appeals split the decision on the two hotels. It found that title to the Oklahoma hotel was held by a corporation and that a majority of the corporate stock was owned by one person, who was joined in the case as an individual defendant, and as a majority shareholder could therefore cause the sale of the land. In regard to the Florida hotel, the trial court found that the corporation that held title to the hotel had several shareholders, including a corporation which held only a minority share, with the individual defendant holding a majority of the corporate shares.

The Court of Civil Appeals concluded that the lis pendens was appropriate on the Oklahoma hotel, but not on the Florida hotel.

The main point of this case is due to the language of Oklahoma's lis pendens statute (12 O.S. Section 2004.2) it is appropriate for lis pendens to be filed not only where the lawsuit involves "title, possession or interest in property", but also allows the

filing of the notice as to actions "involving real property" against "the land affected by the action. (see ¶13)

20. **NEGLIGENCE OF PROPERTY OWNER AND TENANT TO INVITEE**

(Owner of public restaurant has duty to invitees to use reasonable care to maintain its sidewalk; whether hazard is open and obvious is for the jury; owner rather than tenant has duty to maintain premises, where the lease so provides.)

WEST v. SPENCER et al, 2010 OK CIV APP 97, ___ P.__ ___ (decided 06/04/2010; mandate issued 10/08/2010)

Brewer owned a restaurant building and rented it to Spencer who operated a restaurant open to the public. The Plaintiff, West, caught her toe in an expansion joint in the sidewalk outside the restaurant when existing the premises, and was injured. Plaintiff sued the tenant, Spencer, and the property owner, West, for negligence.

Trial court granted summary judgment in favor of West against the Plaintiff, and granted summary judgment in favor of Spencer against the Plaintiff, but the trial court gave no explanation.

On appeal, the Court of Civil Appeals considered the arguments advanced by the parties in their summary judgment pleadings. The Appellate Court rejected the owner's assertion that the expansion joint was a "trivial defect", under the "trivial defect doctrine", because such doctrine only applies to municipalities and not to private land owners, like Brewer. In addition, the Appellate Court rejected the owner's argument that the expansion joint gap (7/8 inch wide, and ¼ to ½ inch deep) was "apparent and observable" or "open and obvious", and that the Plaintiff had failed to "submit evidence in opposition to summary judgment proving the expansion joint in question was different

from expansion joints in other public places." According to the Appellate Court "the issue of whether it was an open and obvious condition is for the jury." This decision in favor of the owner Defendant was reversed and remanded for further proceedings.

The summary judgment in favor of the tenant Defendant was considered in light of the possible duty of the tenant, Spencer, to the invitee Plaintiff. The duty to maintain the sidewalk was the sole responsibility of the owner, West, according to the express terms of the lease agreement. Spencer had no duty to maintain the premises. The summary judgment in favor of the tenant Defendant Spencer was affirmed.

21. **ARBITRATION CLAUSE NOT ENFORCEABLE**

(Arbitration clause in residential construction agreement is not enforceable where the required procedures to follow do not exist)

AMUNDSEN v. WRIGHT, 2010 OK CIV APP 75, ___ P.__ ___ (decided 06/23/2010; mandate issued 07/23/2010):

A dispute arose between a builder and the home owner, and the home owner sued the builder. The builder filed a motion to compel arbitration under the terms of the construction contract. The arbitration clause said "Any and all disputes…shall be submitted to binding arbitration pursuant to the procedures established and maintained by the Central Homebuilder's Association." There were no such procedures.

The trial court overruled the builder's motion to compel arbitration.

On appeal, the Court of Civil Appeals affirmed the trial court and remanded the case to the trial court for further proceedings under the home owner's claims.

The builder's arguments included the following, which were all rejected by the Court of Civil Appeals: (1) the offending language should be removed to reconcile a

"repugnancy" or "inconsistency", (2) the offending language should be removed to recognize such language is "secondary and not central", (3) the offending language should be treated as having failed, thereby allowing the court to appoint an arbitrator to act under the Oklahoma Uniform Arbitration Act, and (4) the offending language should be reformed to be replaced with the OUAA due to a mutual mistake.

22. **ENFORCEABILITY OF NON-COMPETE CLAUSE IN USDA LOAN AGAINST THIRD PARTY**

(A loan agreement with the USDA prohibiting other water districts from competing with the debtor is enforceable and does not violate the Oklahoma Constitution)

RURAL WATER v. CITY OF GUTHRIE, 2010 OK 51, ___ P.__ ___ (decided 06/29/2010; mandate issued __/__/____)

The Rural Water, Sewer, and Solid Waste Management District No. 1 ("Logan-1") filed an action, in the Federal Court for the Western District of Oklahoma, against the City of Guthrie and the Guthrie Public Works Authority (collectively "Guthrie"). The matter was filed to prevent Guthrie from operating in the service areas of Logan-1.

The Federal Court certified two questions for consideration by the Oklahoma Supreme Court, asking whether Logan-1 can enter into agreements for loans from the USDA precluding other providers from competing with the debtor, and whether Logan-1 can enforce such terms, and, if such terms are precluded by the Oklahoma Constitution, are such terms enforceable anyway.

The Oklahoma Supreme Court stated "this Court holds that an indebted rural water district's right to temporarily exclude a competitor's water service within its district is a right bestowed upon the indebted district by Congress pursuant to the terms of the

USDA loan agreement, therefore,…the Oklahoma Constitution is not implicated." (¶1) This holding renders the second question moot.

V. ATTORNEY GENERAL OPINIONS

(NONE)

VI. TITLE EXAMINATION STANDARDS CHANGES

A. EXAMINING ATTORNEY'S RESPONSIBILITIES

1. GENERAL RESPONSIBILITY

According to the Oklahoma Attorney General, only a licensed attorney can issue an "opinion on the marketability of title" regarding title to real estate. This issue arose during the process of interpreting the Oklahoma Statute requiring the examination of a duly-certified abstract of title before a title insurance policy can be issued. 36 O.S. § 5001 (C) provides:

> *Every policy of title insurance or certificate of title issued by any company authorized to do business in this state shall be countersigned by some person, partnership, corporation or agency actively engaged in the abstract of title business in Oklahoma as defined and provided in Title 1 or by an attorney licensed to practice in the State of Oklahoma duly appointed as agent of a title insurance company, provided that no policy of title insurance shall be issued in the State of Oklahoma except after examination of a duly-certified abstract of title prepared by a bonded and licensed abstractor as defined herein.* (underlining added).

The Attorney General opined (1983 OK AGG 281, ¶6-7) as follows:

> *Your second question raises the issue of whether the title examination for purposes of issuing a title policy must be done by a licensed attorney. A previous opinion of the Attorney General held:*
>
> > *"All such examinations of abstract .. . shall be conducted by a licensed attorney prior to issuance of the policy of title insurance." A.G. Opin. No. 78-151 (June 6, 1978).*
>
> *This opinion was based on the assertion that a title insurance policy "expresses an opinion as to the marketability of title." A.G. Opin. No. 78-151, supra. In reality, title insurance simply insures the policyholder against defects in the title. It does not express an opinion that the title is marketable. Land Title Company of Alabama v. State ex rel. Porter, 299 So.2d 289,295 (Ala.1974). While the rationale of the previous opinion is incorrect, we adhere to the conclusion expressed in that opinion that the examination of the abstract pursuant to 36 O.S. 5001(C) (1981) must be done by a licensed attorney. We reach this conclusion because the examination required by*

> *statute would only be useful if the examiner expressed an opinion on the marketability of the title. This constitutes the practice of law by the examiner. Land Title Company of Alabama v. State ex rel . Porter, supra at 295; Kentucky State Bar Association v. First Federal Savings & Loan, 342 S.W.2d 397 (Ky.App. 1961). The theory that the corporation is actually examining the title for itself through an agent or employee and thus not engaged in the practice of law is invalid since laypersons or nonprofessionals cannot perform legal services for their employers. Kentucky State Bar Association v. Tussey, 476 S.W.2d 177 (Ky.App. 1972). There is no prohibition, however, against licensed staff attorneys furnishing title opinions for the company as long as these opinions are not sold or given to third parties. The Florida Bar v. McPhee, 195 So.2d 552 (Fla. 1967); Steer v. Land Title Guarantee & Trust Co., 113 N.E.2d 763 (Ohio Com.Pl. 1953).* (underlining added)

As noted above, under the discussion of new Statutes, 36 O.S. § 5001 was amended, effective July 2007, to specifically require the examination described in that Section to be conducted by a licensed Oklahoma attorney, thereby prohibiting laymen and non-Oklahoma licensed attorneys from undertaking title exams for title insurance purposes.

2. LIABILITY OF TITLE EXAMINERS TO NON-CLIENTS

While there is no foolproof way to avoid liability to non-clients, it is usually a good practice to have both the inside address of the title opinion (i.e., the addressee) and limiting language, elsewhere in the opinion, expressly designate the sole person or company expected to rely on the opinion.

However, even where the opinion is addressed to a specific person or entity, it is possible that due to the particular circumstances surrounding the transaction, the attorney who is representing one party, such as the lender -- and rendering an opinion directed solely to that lender -- might be held to be liable to the opposing party, such as the borrower, as well.

As noted in an Oklahoma case considered by the 10th Circuit U.S. Court of Appeals, Vanguard Production, Inc. v. Martin, 894 F.2d 375 (10th Cir. 1990):

The Oklahoma Supreme Court replied that the pledgee's complaints stated a cause of action under Oklahoma law. Privity of contract does not apply to tort actions under Oklahoma law. See Keel v. Titan Constr. Corp., 639 P.2d 1228, 1232 (Okla. 1981). The Bradford court stated that to determine an attorney's negligence the jury must determine whether the attorney's conduct was "the conduct of an ordinarily prudent man based upon the dangers he should reasonably foresee TO THE PLAINTIFF OR ONE IN HIS POSITION in view of all the circumstances of the case such as to bring the plaintiff within the orbit of defendant's liability." Id. at 191 (emphasis in original).

***

In our view a contract for legal services is a contract for services giving rise to the duty of workmanlike performance. The record in this case reveals extensive communications between the attorneys [for the lender], Martin and Morgan, and the purchaser, Vanguard [the borrower], concerning the [lender's] title opinion. The record also shows that all parties, including Martin, Morgan, [the borrower] Vanguard, and [the lender] Glenfed, were concerned about the Texas Rose Petroleum suit. Thus, we find that an ordinarily prudent attorney in the position of the defendants would reasonably have apprehended that[the borrower] Vanguard was among the class of nonclients which, as a natural and probable consequence of the attorneys' actions in preparing the title opinion for Glenfed, could be injured. Thus, we hold that the defendants owed a duty of ordinary care, Bradford, 653 P.2d at 190, and workmanlike performance, Keel, 639 P.2d at 1231, to Vanguard in the performance of their contract for legal services with Glenfed. We stress that our holding only addresses the question of the duty of the defendants owed to Vanguard and not the question of whether Martin's, Morgan's and Ames, Ashabranner's acts were the proximate cause of Vanguard's injuries. See Bradford, 653 P.2d at 190-91; Keel, 639 P.2d at 1232. (underlining added)

An interesting Oklahoma Court of Appeals case was decided in 1991, American Title Ins. v. M-H Enterprises, 815 P.2d 1219 (Okl. App. 1991). Therein it was held that a buyer of real property can sue (i.e., via counter claim) the title insurer for negligence in the preparation of a title policy, even if the title insurance policy was issued only in favor of the buyer's lender. This rule was applied where: (1) no abstract was prepared, (2) an attorney's title examination was not undertaken, and (3) the insurer/abstractor missed a recorded first mortgage. The facts of the case showed that, after the buyer/borrower lost

the house through a foreclosure of the missed first mortgage, the insurer paid the insured second mortgage holder to settle under the terms of the title insurance policy and had such lender assign the worthless second note and mortgage to the insurer. The insurer then sued the buyer/borrower under the warranty of title in the second mortgage. The appellate court held that while the buyer/borrower was not a named insured, the insurer's own negligence (i.e., no abstract and no examination) caused the loss, and that the insurer did not buy the note and mortgage as a holder in due course, because (1) no value was paid for the acquisition of the note and mortgage (i.e., the payment was to settle its obligations under the policy) and (2) the note and mortgage were already in default when the insurer took an assignment of them.

The message in these two cases appears to be that a party that conducts either the examination or insures the title, can be held liable for an error in such effort to a third party. This is true even where the title examiner and title insurer had not expressly entered into any contractual relationship with such third party. Based upon these two cases, it appears that this liability might arise even where the attorney or insurer specifically directed his opinion or policy to only one of the multiple participants in the transaction.

3. STATUTE OF LIMITATIONS ON TITLE OPINIONS

In terms of the nature of (i.e., tort vs. contract), and the statute of limitations on, attorneys' errors in examination of title, it should be noted that in 1985 the Oklahoma Supreme Court held:

> *In Oklahoma, an action for malpractice, whether medical or legal, though based on a contract of employment, is an action in tort and is governed by the two-year statute of limitations at 12 O.S.A. 1981, § 95 Third. (Seanor*

v. Browne, 154 Okl. 222, 7 P.2d 627 (1932)). This limitation period begins to run from the date the negligent act occurred or from the date the plaintiff should have known of the act complained of. (McCarroll v. Doctors General Hospital, 664 P.2d 382 (Okl. 1983)). The period may be tolled, however, by concealment by the attorney of the negligent acts which injured the client. This Court has previously held, in Kansas City Life Insurance Co. v. Nipper, 174 Okl. 634, 51 P.2d 741 (1935) that:

> *One relying on fraudulent concealment to toll the statute of limitation must not only show that he did not know facts constituting a cause of action, but that he exercised reasonable diligence to ascertain such facts.*

(underlining added)

(Funnell v. Jones, 737 P.2d 105 (Okla. 1985))

However, in 1993 the Oklahoma Supreme Court "clarified" their holding in Funnell by declaring:

> *Appellees argue the instant case should be controlled by Funnell v. Jones, 737 P.2d 105 (Okla. 1985), cert. denied, 484 U.S. 853, 108 S.Ct. 158, 98 L.Ed.2d 113 (1987), a case where we applied the two year tort limitation period to a legal malpractice case. Appellees' reliance on Funnell is misplaced. The opinion in Funnell gives no indication a separate contract theory was alleged there or that the plaintiffs there attempted to rely on the three year limitation period for oral contracts. Thus, our statement in Funnell to the effect an action for malpractice, whether legal or medical, though based on a contract of employment, is an action in tort, must be taken in the context it was made, to wit: determining whether the two year limitation for torts was tolled based on allegations of fraudulent concealment on the part of defendant attorneys and that no acts alleged against defendants occurred within the two years immediately preceding filing of the lawsuit. Id. at 107-108. We did not decide in Funnell a proceeding against a lawyer or law firm is limited only to a proceeding based in tort no matter what the allegations of a petition brought against the lawyer or law firm. We have never so held and, in fact, to so rule would be tantamount to treating lawyers differently than we have treated other professions, something we refuse to do.*
>
> *We have held a party may bring a claim based in both tort and contract against a professional and that such action may arise from the same set of facts. Flint Ridge Development Company, Inc. v. Benham-Blair and Affiliates, Inc., 775 P.2d 797, 799-801 (Okla. 1989) (architectural,*

> *engineering and construction supervision services). In essence, the holding of Flint Ridge is if the alleged contract of employment merely incorporates by reference or by implication a general standard of skill or care which a defendant would be bound independent of the contract a tort case is presented governed by the tort limitation period. Id. at 799-801. However, where the parties have spelled out the performance promised by defendant and defendant commits to the performance without reference to and irrespective of any general standard, a contract theory would be viable, regardless of any negligence on the part of a professional defendant. Id. As pertinent here, the specific promise alleged or reasonably inferred from the petition and documents attached thereto was to search the records of the County Clerk for an approximate nine (9) year period and report those records on file affecting the title for loan purposes. Simply, if this was the promised obligation a contractual theory of liability is appropriate which is governed by the three year limitation period applicable to oral contracts*. (underlining added)

(Great Plains Federal Savings & Loan v. Dabney, 846 P.2d 1088, 1092 (Okla. 1993))

B. NEED FOR STANDARDS

1. BACKGROUND AND AUTHORITY OF STANDARDS

The first set of Statewide Standards was adopted in 1938 by the Connecticut Bar Association. On November 16, 1946 the General Assembly and House of Delegates of the Oklahoma Bar Association ("OBA") approved 21 Title Examination Standards ("Standards") for the first time in state history. 17 O.B.J. 1751. Of these 21, there were 10 without any specific citation of authority expressly listed. There are currently over 100 Standards in Oklahoma, and about 13 of these have no specific citation of authority (i.e., no citation of supporting Oklahoma statutes or case law).

In Oklahoma, new and revised Standards are developed and considered each year at 9 monthly Title Examination Standards Committee ("Standards Committee") meetings held from January to September. These proposals are then presented annually by the Standards Committee to the OBA Real Property Law Section ("Section") at the Section's annual meeting, usually held in November of each year. Immediately thereafter, the Section forwards to the OBA House of Delegates ("House"), for the House's consideration and approval, on the day following the Section meeting, any new or revised Standards which were approved at the Section's meeting.

All Oklahoma Supreme Court opinions are binding and must be followed by all trial court judges, meaning that such decisions are “precedential”. However, an opinion of one of the multiple intermediate 3-judge panels of Courts of Civil Appeals is only “persuasive” on future trial judge’s decisions, and not binding.

Oklahoma’s set of Standards have received acceptance from the Oklahoma Supreme Court which has held:

> *While [the Oklahoma] Title Examination Standards are not binding upon this Court, by reason of the research and careful study prior to their adoption and by reason of their general acceptance among members of the bar of this state since their adoption, we deem such Title Examination Standards and the annotations cited in support thereof to be persuasive.* (underlining added)

Knowles v. Freeman, 649 P.2d 532, 535 (Okla. 1982).

The Standards become binding between the parties:

(1) IF the parties' contract incorporates the Standards as the measure of the required quality of title, for example:

(a) Standard 2.2 REFERENCE TO TITLE STANDARDS provides: *"It is often practicable and highly desirable that, in substance, the following language be included in contracts for a sale of real estate: 'It is mutually understood and agreed that no matter shall be construed as an encumbrance or defect in title so long as the same is not so construed under the real estate title examination standards of the Oklahoma Bar Association where applicable;'"* (emphasis added) and

(b) the Oklahoma City Metropolitan Board of Realtors standard contract provides*: "7. TITLE EVIDENCE: Seller shall furnish Buyer title evidence covering the Property, which shows marketable title vested in Seller according to the title standards adopted by the Oklahoma Bar Association. . .",* (emphasis added) or

(2) IF proceeds from the sale of oil or gas production are being held up due to an allegedly unmarketable title [52 O.S. 570.10.D.2a; also see: Hull, et al. v. Sun Refining, 789 P.2d 1272 (Okla. 1990) ("Marketable title is determined under §540

[now §570.10] pursuant to the Oklahoma Bar Association's title examination standards.")].

In these above instances, the parties might be subject to suits to specifically enforce or to rescind their contracts, to seek damages, or to pay increased interest on the withheld proceeds (i.e., 6% vs. 12%), with the Court's decision being based on the "marketability" of title as measured, where applicable, by the Standards.

However, it should be noted that *"It is, therefore, the opinion of the Attorney General that where there is a conflict between a title examination standard promulgated by the Oklahoma Bar Association and the Oklahoma Statutes, the statutory provisions set out by the Legislature shall prevail."* Okl. A.G. Opin. No. 79-230.

2. IMPETUS FOR STANDARDS: PROBLEMS WITH SEEKING PERFECT TITLE

The title examiner is required, as the first step in the examination process, to determine what quality of title is being required by his client/buyer or client/lender before undertaking the examination.

According to Am Jur 2d:

> *An agreement to sell and convey land is in legal effect an agreement to sell a title to the land, and in the absence of any provision in the contract indicating the character of the title provided for, the law implies an undertaking of the part of the vendor to make and convey a good or marketable title to the purchaser. A contract to sell and convey real estate ordinarily requires a conveyance of the fee simple free and clear of all liens and encumbrances. There is authority that the right to the vendee under an executory contract to a good title is a right given by law rather than one growing out of the agreement of the parties, and that he may insist on having a good title, not because it is stipulated for by the agreement, but on his general right to require it. In this respect, the terms "good title," "marketable title," and "perfect title" are regarded as synonymous and indicative of the same character of title. To constitute such a title, its validity must be clear. There can be no reasonable doubt*

as to any fact or point of law upon which its validity depends. As is sometimes said, a marketable title must be one which can be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence. (underlining added)
(77 Am Jur 2d §115 Title of Vendor: Generally; Obligation to furnish good or marketable title)

While, in the absence of any provisions in a contract for the sale of land indicating the character of the title to be conveyed, the law implies an obligation or undertaking on the part of the vendor to convey or tender a good and marketable title, if the contract expressly stipulates as to the character of the title to be furnished by the vendor, the courts give effect thereto and require that the title offered conform to that stipulation, it is immaterial that it may in fact be a good or marketable title. A contract to convey a specific title is not fulfilled by conveying another and different title. On the other hand, when the title which the vendor offers or tenders conforms to the character of title stipulated in the contract of sale, the vendee is bound to accept it although the title may not be good or marketable within the meaning of the obligation or undertaking to furnish such a title which the law would have implied in the absence of any stipulation. Refusal to accept title tendered in accordance with the terms of sale constitutes a breach by the purchaser of land of his contract to purchase. If a contract for the purchase of real estate calls for nothing more than marketable title, the courts cannot substitute a different contract therefor. (underlining added)
(77 Am Jur 2d §123 Special Provisions as to character of title: Generally.)

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

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

are used interchangeably. Other equivalent terms appear in the notes. A perfect record title may not be marketable, because of apparent defects, which cause reasonable doubts concerning its validity, and a good or marketable title may be far from perfect, because of hidden defects. In fact, under either the English system of unrecorded conveyances, or under the system afforded by our recording acts, "it is impossible in the nature of things that there should be a mathematical certainty of a good title." While examiners should be cautious in advising clients as to the acceptance of a title, neither should they frighten them by advertising these relatively infrequent dangers; and they must remember that a purchaser cannot legally demand a title which is absolutely free from all suspicion or possible defect. He may require only such a title as prudent men, well advised as to the facts and their legal bearings, would be willing to accept. Many courts further hold that a doubt sufficient to impair the character of marketableness must be such as will affect the selling value of the property or interfere with the making of a sale.

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

Recorded muniments form so generally the proofs of title in this country, that the courts of several jurisdictions hold not only 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)
> (§46. Classification of Vendor Titles)

Title insurance, like most types of insurance, insures against loss due to certain conditions. One of these conditions which triggers liability is “unmarketability of title”. Such term is defined in such policy as: “an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which could entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.” (ALTA Owner’s Policy (10-21-87)) Such definition is sufficiently circular to require the interpretation of the applicable State’s law in each instance to determine whether specific performance would be enforced in such jurisdiction.

In summary, it appears that "marketable title" means (1) the public record affirmatively shows a solid chain of title (i.e., continuous and uninterrupted) and (2) the public record does not show any claims in the form of outstanding unreleased liens or encumbrances. This "good record title" can be conveyed and backed up by the delivery of a deed to the vendee containing sufficient warranties to ensure that the vendor must make the title "good in fact", if non-record defects or non-record liens and encumbrances surface later.

However, to the extent that a contract provision -- providing that the vendor must convey “marketable title” -- is interpreted to require title to be free from "all reasonable doubt", it opens the door to differences of opinion between persons of “reasonable

prudence". As noted in Bayse:

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

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

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

> *When the examiner, upon the basis of these decisions, has found that the present vendor can convey a title which is good in fact, he must then ask whether the title has the additional characteristic of marketability. What constitutes a marketable title? Here again legal definitions are subordinate to functional meaning. What the purchaser of land wants is a title which not only can be defended but which can be presented to another examiner with the certainty that it will be unobjectionable. It is small comfort to the owner that he has not been disseized if he is unable to sell or mortgage. If one and the same examiner passed all titles in a given locality, the title which the examiner considered good as a practical matter would, of course, also be merchantable. But such is not the case, and the present examiner must anticipate that his client will in the future attempt to either sell or mortgage and that the same title will come under the scrutiny of some other examiner. In each of the decisions which an examiner has made in determining the validity of a title he has had to exercise sound legal and practical judgment. Will a second examiner, vested with the same wide discretion, reach the same conclusion? If his*

conclusion is different and he rejects the title, the professional reputation of the first examiner will be impaired and his client may suffer substantial financial loss. Faced with this uncertainty, many examiners have adopted a solution which emphasizes individual security rather than the general facility of land transfers. This is the practice known as "construing against title," or more picturesquely, as "flyspecking." These terms indicate that the examiner indulges in a minimum of presumptions of law and fact, demands full search of title in every instance, and places no reliance upon the statute of limitations. As a consequence he considers all errors of record as substantial. The result of even a ***single examiner*** *in a community adopting this practice is to set up titles which are practically good in fact. Examiner* ***A*** *rejects a title on technical grounds. Thereafter, Examiner* ***B****, to whom the same problem is presented, feels compelled to reject any title presented to him which exhibits a similar defect. Examiner* ***A*** *is thereupon confirmed in the wisdom of his initial decision, and resolves to be even more strict in the future. It is sometimes said that the practice of construing against title reduces an entire bar to the standards of its most timorous member. This is an understatement, for the net effect is an extremity obtained only by mutual goading.*

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

> *examiner waives an apparent defect of title it may be deemed a cloud upon the title by a subsequent examiner. 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 (or, in some states, back to the root of title);
2. The costs to cure minor defects are often relatively large compared to the risk being extinguished;
3. The unexpected costs to remedy problems already existing when the vendor came into title, which were waived by the vendor's attorney, are certainly not welcomed by the public; and
4. The prior examiner looks inept and/or the subsequent examiner looks unreasonable, when a preexisting defect is waived by one attorney and "caught" by the next.

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

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

The State of Oklahoma used to have one of the most strict standards for "marketable title" which was caused by the interpretation of the language of several early Oklahoma Supreme Court cases. The current title standard in Oklahoma has been changed, as of November 10, 1995, to be less strict. It now provides:

1.1 MARKETABLE TITLE DEFINED

"A marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record."

In response to this obvious need to avoid procedures that alienated the public and caused distance to grow between examiners, a movement began and mushroomed in a couple of decades throughout the country to adopt uniform title examination standards. Such standards were adopted first in local communities by the practicing bar and then on a statewide basis. Although there is some competition among local bars for the place of honor, it appears that the local bar of Livingston County, Illinois adopted a set of 14 standards on April 7, 1923. Thereafter, in 1933 or 1934, the Gage County Nebraska Bar Association formulated 32 title standards. The Connecticut Bar, in 1938, became the first state to have statewide standards by adopting a set of 50. ("Increasing Marketability")

Over the years, since 1938, a total of 31 States have adopted statewide sets of

Standards. Of these, there are currently 19 States which have sets of Standards which have been updated in the last 5 years. In the recent past, 4 States have adopted their first sets of Standards including: Vermont (1995), Arkansas (1995), Texas (1997) and Louisiana (2001). See the attached National Title Examination Standards Resource Center Report, and see my web site at www.eppersonlaw.com for more details on the status of Standards in other States.

C. NEWEST CHANGES TO TITLE STANDARDS

The revised Standards and new Standards, discussed below, were considered and approved by the Standards Committee during the January-September period. The proposed changes and additions were then published in the Oklahoma Bar Journal in October, and were then considered and approved by the Section at its annual meeting in November. They were thereafter considered and approved by the OBA House of Delegates in November. These changes and additions became effective immediately upon adoption by the House of Delegates. A notice of the House's approval of the proposed new and revised Standards was thereafter published in the Oklahoma Bar Journal. The new "TES Handbook", containing the updated versions of these Standards, is printed and mailed to all Section members by sometime in January.

The following sections display and discuss the Proposals which were submitted to the Section and the House of Delegates for their approval. The text for the discussion is taken from the Annual Report published in the Oklahoma Bar Journal in October. This text was prepared by the General Counsel for the OBA Real Property Law Section, Joyce Palomar, a full-time professor of law at the University of Oklahoma, with the assistance of Jack Wimbish, a Committee member from Tulsa. Note that where an existing standard

is being revised, a "legislative" format is used below, meaning additions are underlined, and deletions are shown by [brackets].

A brief explanatory note precedes each Proposed Standard, indicating the nature and reason for the change proposed.

ATTACHED IS A SET OF REVISED TITLE EXAMINATION STANDARDS:

1. **THE 2009 REPORT WAS SUBMITTED TO THE NOVEMBER 5, 2009 ANNUAL SECTION MEETING AND THE NOVEMBER 6, 2009 HOUSE OF DELEGATES MEETING, FOR THEIR CONSIDERATION. THEY WERE APPROVED, AND WERE EFFECTIVE IMMEDIATELY.**

2. **THE FOLLOWING 2010 T.E.S. REPORT WILL BE SUBMITTED TO THE NOVEMBER 18, 2010 ANNUAL REAL PROPERTY LAW SECTION MEETING AND THE NOVEMBER 19, 2010 HOUSE OF DELEGATES MEETING, FOR THEIR CONSIDERATION.**

1. 2009 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2009, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 6, 2009. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Oklahoma City on Thursday, November 5, 2009.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 6, 2009. Proposals adopted by the House of Delegates become effective immediately.

An explanatory note precedes each proposed Title Standard, indicating the nature and reason for the change proposed.

Proposal 1.

The Committee recommends a change in Comment 1 to Title Standard 7.2 to more adequately reflect the status of the law which supports that standard.

7.2 MARITAL INTERESTS AND MARKETABLE TITLE

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

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

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

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

Comments:

1. ~~There is no question that a~~An instrument relating to the homestead is ~~**VOID**~~ void unless both husband and wife subscribe it. *Grenard v. McMahan,* 441 P.2d 950 (Okla. 1968). ~~It is also settled that~~ A husband

and wife must execute the same instrument, as separately executed instruments will both be void, *Thomas v. James*, 84 Okla. 91, 202 P.499 (1921). It is essential to make the distinction between a *valid* conveyance and a conveyance vesting *marketable title* when consulting this standard.

2. While 16 O.S. § 13 states that "The husband or wife may convey, mortgage or make any contract relating to any real estate, other than the homestead, belonging to him or her, as the case may be, without being joined by the other in such conveyance, mortgage or contract," joinder by husband and wife must be required in all cases due to the impossibility of ascertaining from the record whether the property was or was not homestead or whether the transaction is one of those specifically permitted by statute. *See* 16 O.S. §§ 4 and 6 and Okla. Const. Art. XII, §2. A well-settled point is that one may not rely upon recitations, either in the instrument or in a separate affidavit, to the effect that property was not the homestead. Such a recitation by the grantor may be strong evidence when the issue is litigated, but it cannot be relied upon for the purpose of establishing marketability. *Hensley v. Fletcher*, 172 Okla. 19, 44 P.2d 63 (1935).

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

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

4. A non-owner spouse may join in a conveyance as part of a special phrase placed after the habendum clause, yet be omitted from the grantor line of a deed, and still be considered a grantor to satisfy paragraph B. of this title standard.

Proposal 2.

The Committee recommends a new comment to Title Standard 14.3 to clarify what is an acceptable execution of an instrument by limited liability company.

Standard 14.3 AUTHORITY OF MANAGER TO ACT FOR LIMITED LIABILITY COMPANY

The examiner, in the absence of evidence to the contrary, may presume that a manager of a limited liability company was authorized to act on behalf of the company if the manager executes and acknowledges in proper form a recorded instrument for apparently carrying on the business of the limited liability company.

Comment: The Oklahoma Limited Liability Company Act as enacted on September 1, 1992, authorized the Articles of Organization to include a statement of restrictions on the authority of the manager. This provision was deleted by 1993 Okla. Sess. Laws, ch. 366, § 3, eff. September 1, 1993. The Committee was unable to reach a consensus whether the filing of the Articles of Organization with such restrictions constitutes constructive notice of the restrictions on the authority of the manager. If a recorded instrument is executed by a domestic limited liability company before September 1, 1993, the examiner should consider whether it is necessary to review a copy of the Articles of Organization filed with the Secretary of State to determine whether these articles contain a statement of restrictions on the authority of the manager.

Comment: An instrument executed on behalf of a limited liability company in which the signatory party is identified as a "Manager and Member," "Member Manager" or "Managing Member" is to be considered as satisfying the provisions of 18 O.S. §2015 A 3.

Authority: 16 O.S. § 53 18 O.S. §§ 2005, 2019, 2042; 1992 Okla. Sess. Laws, ch. 148,
§ 6, eff. Sept. 1, 1992.

Proposal 3.

The Committee recommends Title Standard 35.2 be amended to accurately reflect the provisions of the legislation which underlies this Standard and to update the applicable authority.

Standard 35.2 SERVICEMEMBERS' CIVIL RELIEF ACT AGAINST DEFAULT JUDGMENTS:

The Servicemembers' Civil Relief Act, and amendments thereto, are solely for the benefit of those in military service; and, if the court has presumed to take jurisdiction and there is nothing in the record that would affirmatively indicate that any party affected by the court proceedings was in military service, the form of the affidavit as to military service or its entire absence from the record does not justify the rejection of the title.

Authority: Hynds v. City of Ada *ex rel*. Mitchell, 1945 OK 167, 158 P.2d 907 (1945); Wells v. McArthur, 1920 OK 96, 188 P. 322 (1920); State *ex rel.*

Commissioners of the Land Office v. Warden, 1946 OK 155, 168 P.2d 1010 (1946); Snapp v. Scott, 1946 OK 114, 167 P.2d 870 (1946); 50 APP. U.S.C.A.; Section 521 as amended Jan. 28, 2008.

2. 2010 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2010, to be presented for approval by the House of Delegates at the Oklahoma Bar Association Annual Meeting, Nov. 19, 2010. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Tulsa on Thursday, Nov. 18, 2010.

Proposals approved by the section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, Nov. 19, 2010. Proposals adopted by the House of Delegates become effective immediately.

An explanatory note precedes each proposed Title Standard, indicating the nature and reason for the change proposed.

Proposal 1.

The committee recommends a change to the first comment of Title Standard 7.2 to more accurately reflect that the legal authority on which the standard is based.

Standard 7.2 MARITAL INTERESTS AND MARKETABLE TITLE

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

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

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

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

Comments:

1. There is no question that an instrument relating to the homestead is void unless husband and wife subscribe it. *Grenard v. McMahan,* 1968 OK 75, 441 P.2d 950 (Okla. 1968), *Atkinson v. Barr*, 1967 OK 103, 428 P.2d 316, but also see *Hill v. Discover Bank*, 2008 OK CIV APP 111, 213 P.3d 835. It is also settled that

husband and wife must execute the same instrument, as separately executed instruments will be void. *Thomas v. James*, 1921 OK 414, 84 Okla. 91, 202 P. 499 (1921). It is essential to make the distinction between a *valid conveyance* and a conveyance vesting *marketable title* when consulting this standard.

2. While 16 O.S. §13 states that "The husband or wife may convey, mortgage or make any contract relating to any real estate, other than the homestead, belonging to him or her, as the case may be, without being joined by the other in such conveyance, mortgage or contract," joinder by husband and wife must be required in all cases due to the impossibility of ascertaining from the record whether the property was or was not homestead or whether the transaction is one of those specifically permitted by statute. *See* 16 O.S. §§4 and 6 and Okla. Const. Art. X II, §2. A well-settled point is that one may not rely upon recitations, either in the instrument or in a separate affidavit, to the effect that property was not the homestead. Such a recitation by the grantor may be strong evidence when the issue is litigated, but it cannot be relied upon for the purpose of establishing marketability. *Hensley v. Fletcher*, 172 Okla. 19, 44 P.2d 63 (1935).

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

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

Proposal 2.

The committee recommends amendment to Standard 8.1 and 15.4 to reflect the effect of the repeal in the Oklahoma Estate Tax.

STANDARD 8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES

A. The termination of the interest of a deceased joint tenant or life tenant may be established on a conclusive basis by one of the following methods:

1. By proceeding in the district court as provided in 58 O.S. §911,

2. By a valid judicial finding of the death of the joint tenant in any action brought in a court of record, or

3. By filing documents that satisfy 58 O.S. §912C.

B. The termination of the interest of a deceased joint tenant or life tenant may be established on a prima facie basis by one of the following methods:

1. By recording certified copies of letters testamentary or letters of administration for the estate of the deceased joint tenant or life tenant or

2. by recording an affidavit from a person other than those listed in 58 O.S. §912C which:

a. has a certified copy of the decedent's death certificate attached;

b. reflects that the affiant has personal knowledge of the matters set forth therein;

c. includes a legal description of the property;

d. states that the person named in the death certificate is one and the same person as the deceased joint tenant or life tenant named in a previously recorded instrument which created or purported to create the joint tenancy or life tenancy in such property, and identifying such instrument by book and page where recorded.

C. A waiver or release of the Oklahoma estate tax lien for the joint tenant or life tenant must be obtained unless:

1. A district court has ruled pursuant to 58 O.S. §282.1 that there is no estate tax liability,

2. The joint tenant or life tenant has been dead more than 10 years, or

3. The sole surviving joint tenant or remainder interest holder is the surviving spouse of the deceased joint tenant or sole life tenant~~.~~, or

4. The date of death of the joint tenant or life tenant is on or after Jan. 1, 2010.

Authority: 16 O.S. §§53 A (10); 82-84; 58 O.S. §§23, 133, 282.1, 911 and 912; 60 O.S. §§36.1 and 74, and 68 O.S. §§811 and 815.

Comment: Title 58 O.S. §912 is a procedural statute, and may be applied retroactively because it does not affect substantive rights; See Opin. Atty. G en. 74-271 (Feb. 10, 1975), *Texas County Irr. & Water v. Okla. Water*, 803 P.2d 1119 (Okla. 1990), and *Shelby-Downard Asphalt Co., v. Enyart*, 67 Okla. 237, 170 P.

708 (1918). The death of a joint tenant or a life tenant may be conclusively established under §912 regardless of the date of death and regardless of the date of filing of the affidavit.

A retained life estate [e.g., Mom conveys Blackacre to Son, reserving a life estate to herself] is included in the life tenant's taxable estate at death, 68 O.S. §807 (A) (3). However, a non-retained pure life estate, unaccompanied by a general power of appointment, is not subject to Oklahoma estate tax, and an estate tax lien release is not required in such instance. For example, if Mom conveys Blackacre for life to Son, remainder over to Granddaughter, Son has a pure life estate which is not included in his gross estate at his death and is not taxable nor subject to the estate tax lien. An estate tax lien release is not required in such a case. But if Mom were to have given Son not only the life estate but also a general power of appointment [as specially defined at 68 O.S. §807 (A) (9)] over the remainder, such a life estate with a power *would be included* in Son's taxable estate, and a lien release would be required.

The marketability of title may also be impaired by the lien of Federal estate tax. See Title Standard No. 25.2.

STANDARD 15.4 ESTATE TA X CONCERNS OF REVOCABLE TRUSTS.

Where title to real property is vested in the name of a revocable trust, or in the name of a trustee(s) of a revocable trust, and a subsequent conveyance of such real property is made by a trustee(s) of a revocable trust, who is other than the settlor(s) of such revocable trust, a copy of the order of the Oklahoma Tax Commission releasing or exempting the estate of the non-joining settlor(s) from the lien of the Oklahoma estate tax, and a closing letter from the Internal Revenue Service, if the estate is of sufficient size to warrant the filing of a Federal estate tax return, should be filed of record in the office of the county clerk where such real property is located unless evidence, such as an affidavit by a currently serving trustee of the revocable trust is provided to the title examiner to indicate that one of the following conditions exists: A. the non-joining settlor(s) was alive at the time of the conveyance; or

B. the settlors were husband and wife and:

1. one settlor is deceased, and

2. the sole surviving settlor is the surviving spouse of the deceased settlor, and

3. the assets of the trust, pursuant to the terms of the trust, pass to the benefit of the surviving settlor spouse, upon the death of the deceased settlor spouse; or

C. the sole settlor is deceased and the assets of the trust, pursuant to the terms of the trust, pass to the benefit of the surviving spouse of the deceased settlor, upon the death of the settlor; or

D. more than ten (10) years have elapsed since the date of the death of the non-joining settlor(s), or since the date of the conveyance from the trustee(s), and no estate tax lien against the estate of the non-joining settlor(s) appears of record in the county where the property is located~~.~~ **or**

E. the date of death of the non-joining settlor(s) is on or after Jan. 1, 2010.

Proposal 3.

The committee recommends a change in Title Standards 12.3 and 12.5 to reflect that the standards apply to all legal entities.

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

The following defects my be disregarded after an instrument from a ~~corporation~~ legal entity has been recorded for five years:

A. the instrument has not been signed by ~~a proper officer of the corporation~~ the proper representative of the legal entity,

B. The representative is not authorized to execute the instrument on behalf of the legal entity,

~~B.~~C. the instrument is not acknowledged, and

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

Authority: 16 O.S. §§1 & 27a.

12.5 ~~CORPORATE~~ POWERS OF ATTORNEY BY LEGAL ENTITIES

A. If a recorded instrument has been executed by an attorney in fact on behalf of a ~~corporation,~~ legal entity, the examiner should accept the instrument if:

1. the power of attorney authorizing the attorney in fact to act on behalf of the ~~corporation~~ legal entity is executed in the same manner as a ~~corporate~~ conveyance by a legal entity,

2. the power of attorney is recorded in the office of the county clerk,

3. the power of attorney shows that the attorney in fact had the authority to execute the recorded instrument, and

4. the power of attorney was executed before the recorded instrument was executed.

B. Notwithstanding paragraph A above, if a recorded instrument has been executed by an attorney in fact on behalf of a ~~corporation~~, legal entity, the examiner should accept the instrument if the instrument has been of record for at least five (5) years even though a power of attorney has not been recorded in the office of the county clerk of the county in which the property is located.

Authority: 16 O.S. §§1, 3, 20, 27a, 53, 93.

Proposal 4.

The committee recommends amendments to the comments to Title Standard 17.4 to reflect unanswered issues created by the statute and the repeal of the Oklahoma Estate Tax.

17.4 TRANSFER-ON-DEATH DEEDS

A deed appearing of record executed in accordance with the "Nontestamentary Transfer of Property Act" should be accepted as a conveyance of the grantor's interest in the real property described in such deed effective upon the death of the grantor, provided that an affidavit evidencing the death of such grantor has been recorded, as specified in the act, and no evidence appears of record by which:

A. the conveyance represented by such deed has otherwise been revoked, disclaimed* or has lapsed pursuant to the provisions of the act, or

B. the designation of the grantee beneficiary or grantee beneficiaries in such deed has been changed via a subsequent transfer-on-death deed pursuant to the provisions of the act.

Authority: 58 O.S. §1251, *et seq*.

*The examiner should be aware of the fact that a disclaimer under the provisions of the act may be executed within a period of time ending nine (9) months after the death of the owner/grantor.

Comment: Pursuant to the provisions of the act, releases for Oklahoma estate taxes and, if applicable, federal estate taxes for the deceased grantor, together with a death certificate, shall be attached to the affidavit evidencing the death of

the grantor, except no tax releases or death certificate are required in instances in which the grantor and grantee were husband and wife. No Oklahoma estate tax release is required for the estate of a grantor who died on or after Jan. 1, 2010.

Comment: The examiner should be aware that the grantor's interest may be subject to the homestead rights of a surviving spouse pursuant to Article 12, Section 2 of the Oklahoma Constitution. The examiner should be provided with satisfactory evidence which must be recorded, such as an affidavit as to marital status or death certificate of the grantor showing no surviving spouse. If the evidence provided to the examiner reveals that the grantor had a spouse at the time of death, the examiner should require a quit claim deed from the surviving spouse, showing marital status and joined by spouse, if any.

Comment: The examiner should be aware that an ambiguity will arise in 58 O.S. §1254 (B) if the grantor records more than one transfer-on-death deed ("TOD deed") conveying fractional interests, unless the owner/grantor has expressed an intent in the subsequent deed or deeds not to revoke the previous deed or deeds. For instance, if X owns Greenacre and conveys 50% to A by TOD deed, and later X conveys 50% to B by a TOD deed, the conveyance to B would create uncertainty as to whether A and B each had 50%, for a total of 100%, or only B had 50% with the remaining 50% being vested in the grantor's estate.

Comment: In instances in which the TOD deed lists multiple grantee/ beneficiaries as joint tenants, the death of one or more of such grantees prior to the death of the grantor in the deed precludes the creation of the estate of joint tenancy for the surviving grantees under the precepts of the requisite unities for a joint tenancy estate. A question remains as to whether the interest of the grantor vests, via the TOD deed, in the surviving grantees as tenants-in-common or fails to vest in such grantees due to the fact the estate of joint tenancy was not created in such surviving grantees at the time of death of the grantor.

Comment: Commencing Nov. 1, 2010, pursuant to 58 O.S. §1252 (C), the grantee/beneficiary, in order to accept the real estate pursuant to a TOD deed, shall record an affidavit with the County Clerk unless such grantee/beneficiary has recorded a timely executed disclaimer. It is an unsettled point of law as to whether or not the requirement for an acceptance applies retroactively to TOD deeds recorded prior to Nov. 1, 2010.

Proposal 5.

The committee recommends the comments of Title Standards 30.3, 30.4, 30.5, 30.6, 30.7, 30.8, 30.9 and 30.10 be amended to make the current effect of the Marketable Record Title Act more apparent to examiners.

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; or 2) A connected series of conveyances or other title transactions of public record in which the root of title has been a matter of public record for at least thirty (30) years.

Authority: 16 O.S. §71(a) & (b); L. Simes & C. Taylor, Model Title Standards, Standard 4.3, at 25 (1960).

Similar Standard: Mich., 1.3.

Comment: Assume A is the grantee in a deed recorded in ~~1915~~1975 and that nothing affecting the described land has been recorded since then. In ~~1945~~2005 A has an "unbroken chain of title of record." Instead of a conveyance, the title transaction may be a decree of a district court or court of general jurisdiction, which was entered in the court records in ~~1915~~1975. Likewise, in ~~1945~~2005, A has an "unbroken chain of title of record."

Instead of having only a single link, A's chain of title may contain two or more links. Thus, suppose X is the grantee in a deed recorded in ~~1915~~1975; and X conveyed to Y by deed recorded in ~~1925~~1985; Y conveyed to A by deed recorded in ~~1940~~2000. In ~~1945~~2005 A has an "unbroken chain of title of record." Any or all of these links may consist of decrees of a district court or court of general jurisdiction instead of deeds of conveyance.

The significant time from which the 30-year record title begins is not the delivery of the instrument, but the date of its recording. Suppose the deed to A is delivered in ~~1915~~1975 but recorded in ~~1925~~1985. A will not have an "unbroken chain of title of record" until ~~1955~~2015.

Decrees of a court in a county other than where the land lies do not constitute a root of title until recorded in the county in which the land lies.

For a definition of "root of title" see Marketable Record Title Act, 16 O.S. §78(e).

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.

Authority: 16 O.S. §72(d); L. Simes & C. Taylor, Model Title Standards, Standard 4.4, at 26-27 (1960).

Similar Standard: Mich., 1.4.

Comment: The obvious case of a recorded instrument purporting to divest is a conveyance to another person. A is the grantee in a deed recorded in ~~1915~~1965. The record shows a conveyance of the same tract by A to B in ~~1925~~1975. Then B deeds to X in ~~1957~~2007. Although B had a 30-year record chain of title in ~~1945~~1995, the deed to X purports to divest it, and B, thereafter, does not have a title.

A recorded instrument may also purport to divest even though there is not a complete chain of record title connecting the grantee in the divesting instrument with the 30-year chain. Suppose A is the last grantee in a recorded chain of title, the last deed of which was recorded in ~~1915~~1975. A deed of the same land was recorded in ~~1925~~1985, from X to Y , which recites that A died intestate in ~~1921~~1981 and that X is A's only heir. There is nothing else on record indicating that X is A's heir. The deed recorded in ~~1925~~1985 is one "purporting to divest" within the terms of the act. This is the conclusion to be reached whether the recital of heirship is true or not.

Or suppose, again, that A is the last grantee in a chain of title, the last deed of which was recorded in ~~1915~~1965. A deed to the same land from X to Y was recorded in ~~1925~~1975, which contains the following recital: "being the same land heretofore conveyed to me by A." There is no instrument on record from A to X . This instrument is nevertheless one "purporting to divest" within the terms of the act.

Suppose that in ~~1915~~1975, A was the last grantee in a recorded chain of title, the deed to A being recorded in that year. A deed of the same land was recorded in ~~1925~~1985, signed:

"A by B, attorney-in-fact." Even though there is no power of attorney on record, and even though the recital is untrue, the instrument is one "purporting to divest" within the terms of the act.

Suppose that A is the last grantee in a recorded chain of title, the last deed of which was recorded in ~~1915~~1935. In ~~1955~~1975 there was recorded a deed to Y from X , a stranger to the title, which recited that X and X 's predecessors have been "in continuous, open, notorious and adverse possession of said land as against all the world for the preceding thirty years." This is an instrument "purporting to divest" A of A's interest, within the terms of the act.

On the other hand, an inconsistent deed on record, is not one "purporting to divest" within the terms of the act, if nothing on the record purports to connect it with the 30-year chain of title. The following fact situations illustrate this.

A is the last grantee in a recorded chain of title, the last deed of which was recorded in ~~1915~~1965. A warranty deed of the same land from X to Y was recorded in ~~1925~~1975. The latter deed is not one "purporting to divest" within the terms of the act.

A is the last grantee in a recorded chain of title, the last deed of which was recorded in ~~1915~~1965. A mortgage from X to Y of the same land, containing covenants of warranty, is recorded in ~~1925~~1975. The mortgage is not an instrument "purporting to divest" within the terms of the act.

Although the recorded instruments in the last two illustrations are not instruments "purporting to divest" the 30-year title, they are not necessarily nullities. The marketable record title can be subject to interests, if any, arising from such instruments, 16 O.S. §72(d).

30.5 INTERESTS OR DEFECTS IN THE THIRTY-YEAR CHAIN

If the recorded title transaction which constitutes the root of title, or any subsequent instrument in the chain of record title required for a marketable record title under the terms of the act, creates interests in third parties or creates defects in the record chain of title, then the marketable record title is subject to such interests and defects.

Authority: 16 O.S. §72(a) & (d); L. Simes & C. Taylor, Model Title Standards, Standard 4.6, at 28-29 (1960).

Similar Standard: Mich., 1.8.

Comment: This standard is explainable by the following illustrations:

1. In ~~1915~~1975, a deed was recorded conveying land from A, the owner in fee simple absolute, to "B and B's heirs so long as the land is used for residence purposes," thus creating a determinable fee in B and reserving a possibility of reverter in A. In ~~1925~~1985, a deed was recorded from B to C and C's heirs "so long as the land is used for residence purposes, this conveyance being subject to a possibility of reverter in A." In ~~1945~~2005, C has a marketable record title to a determinable fee which is subject to A's possibility of reverter.

2. Suppose, however, that, in ~~1915~~1975, a deed was recorded conveying a certain tract of land from A, the owner in fee simple absolute, to "B and B's heirs so long as the land is used for residence purposes"; and suppose, also, that in ~~1918~~1978 a deed was recorded by B to C and C's heirs, conveying the same tract in fee

simple absolute, in which no mention was made of any special limitation or of A's possibility of reverter. There being no other instruments of record in 19482008, C has a marketable record title in fee simple absolute. C's root of title is the deed from B to C and not the deed from A to B; and there are no interests in third parties or defects created by the "muniments of which such chain of record title is formed."

A general reference to interests prior to the root of title is not sufficient unless specific identification is made to a recorded title transaction, 16 O.S. §72(a).

30.6 FILING OF NOTICE

A marketable record title is subject to any interest preserved by filing a notice of claim in accordance with the terms of Sections 74 and 75 of the Marketable Record Title Act.

Authority: 16 O.S. §§74 & 75; L. Simes & C. Taylor, Model Title Standards, Standard 4.7 at 29-30 (1960).

Comment: Suppose A was the grantee in a chain of record title of a tract of land, a deed to which was recorded in ~~1900~~1960. In ~~1902~~1962, a mortgage of the same land from A to X was recorded. In ~~1906~~1966, a mortgage of the same land from A to Y was recorded. In ~~1918~~1978, a deed of the same land from A to B in fee simple absolute was recorded, which made no mention of the mortgages. In ~~1947~~2007, Y recorded a notice of Y 's mortgage, as provided in Sections 74 and 75 of the act. X did not record any notice. In ~~1948~~2008, B had a marketable record title, which is subject to Y 's mortgage, but not to X 's mortgage. B's root of title is the ~~1918~~1978 deed. Therefore, X and Y had until ~~1948~~2008 to record a notice for the purpose of preserving their interests. If X had filed a notice after ~~1948~~2008, it would have been a nullity, since X's interest was already extinguished.

The filing of a notice may be a nullity not only because it comes too late, but also because it concerns a subject matter not within the scope of the statute. Thus, recorded notices of real estate commissions claimed or other charges which do not constitute liens on the property have no effect under the act, 16 O.S. §72(b).

30.7 THIRTY-YEAR POSSESSION IN LIEU OF FILING NOTICE

If an owner of a possessory interest in land under a recorded title transaction 1) has been in possession of such land for a period of thirty (30) years or more after the recording of such instrument, and 2) such owner is still in possession of the land, any Marketable Record Title, based upon an independent chain of title, is subject to the title

of such possessory owner, even though such possessory owner has failed to record any notice of such possessory owner's claim.

Authority: 16 O.S. §§72(d) & 74(b); L. Simes & C. Taylor, Model Title Standards, Standard 4.8, at 30-31 (1960).

Comment: The kind of situation which gives rise to this standard is suggested by the following illustration. A was the last grantee in a chain of record title to a tract of land, by a deed recorded in ~~1915~~1975. There were no subsequent instruments of record in this chain of title. A has been in possession of the land since ~~1915~~1975 and continues in possession, but has never filed any notice as provided in Section 74 of the Marketable Record Title Act. A deed of the same land, unconnected with A's chain of title, from X to Y , was recorded in ~~1916~~1976; no other instruments with respect to this land appearing of title. On the other hand, A had a marketable record title in ~~1945~~2005, but in ~~1946~~2006, according to Section 72(d), it is subject to Y 's marketable record title. Thus, the relative rights of A and of Y are determined independently of the act, since the interest of each is subject to the other's deed. A's interest being prior in time, and Y 's deed being merely a "wild deed," under common law principles A's title should prevail.

Under 16 O.S. §74(b), possession cannot be "tacked" to eliminate the necessity of recording a notice of claim.

30.8 EFFECT OF ADVERSE POSSESSION

A marketable record title is subject to any title by adverse possession which accrues at any time subsequent to the effective date of the root of title, but not to any title by adverse possession which accrued prior to the effective date of the root of title.

Authority: 16 O.S. §§72(c) & 73; L. Simes & C. Taylor, Model Title Standards, Standard 4.9, at 31 (1960).

Comment: (Assume the period for title by adverse possession is 15 years.)

1. A is the grantee of a tract of land in a deed which was recorded in ~~1900~~1950. In the same year, X entered into possession claiming adversely to all the world and continued such adverse possession until ~~1916~~1966. In ~~1917~~1967, a deed conveying the same land from A to B was recorded. No other instruments concerning the land appearing of record, B has a marketable record title in ~~1947~~1997, which extinguished X 's title by adverse possession acquired in ~~1915~~1965.

2. Suppose A is the grantee of a tract of land in a deed which was recorded in ~~1915~~1965. In ~~1941~~1991, X entered into possession claiming adversely to all the world and continued such adverse possession until the present time. No other

instruments concerning the land appearing of record. In ~~1945~~1995, A had a marketable record title, but it was subject to X 's adverse possession and when X's period for title by adverse possession was completed in ~~1956~~2006, A's title was subject to X 's title by adverse possession.

30.9 EFFECT OF RECORDING TITLE TRANSACTION DURING THE THIRTY YEAR PERIOD

The recording of a title transaction subsequent to the effective date of the root of title has the same effect in preserving any interest conveyed as the filing of the notice provided for in Section 74 of the act.

Authority: 16 O.S. §72(d); L. Simes & C. Taylor, Model Title Standards, Standard 4.10, at 32-33 (1960).

Comment: This standard is operative both where there are claims under a single chain of title and where there are two or more independent chains of title. The following illustrations show how it operates.

1. Suppose A is the grantee of a tract of land in a deed which was recorded in ~~1900~~1960. A mortgage of this land executed by A to X was recorded in ~~1905~~1965. In ~~1910~~1970, a deed conveying the land from A to B was recorded, this deed making no reference to the mortgage to X. In ~~1939~~1999, an instrument assigning X 's mortgage to Y was recorded. In 19402000, B had a marketable record title. But it was subject to the mortgage held by Y because the assignment of the mortgage was recorded less than 30 years after the effective date of B's root of title. If, however, Y had recorded the assignment in ~~1941~~2001 the mortgage would already have been extinguished in ~~1940~~2000 by B's marketable title; and recording the assignment in ~~1941~~2001 would not revive it.

2. Suppose a tract of land was conveyed to A, B and C as tenants in common, the deed being recorded in ~~1900~~1960. Then in ~~1905~~1965, A and B conveyed the entire tract in fee simple to D and the deed was at once recorded. In ~~1925~~1985, D conveyed to E in fee simple, and the deed was at once recorded. No mention of C's interest was made in either the ~~1905~~1965 or ~~1925~~1985 deeds. Nothing further appearing of record, E had a marketable record title to the entire tract in ~~1935~~1995. This extinguished C's undivided one-third interest.

3. Suppose the same facts, but assume also that, in ~~1936~~1996, C conveyed C's one-third interest to X in fee simple, the deed being at once recorded. This does not help C any. C's interest, having been extinguished in ~~1935~~1995, is not revived by this conveyance.

4. Suppose A, being the grantee in a regular chain of record title, conveyed to B in fee simple in ~~1900~~1960, the deed being at once recorded. Then, in ~~1905~~1965, X ,

a stranger to the title, conveyed to Y in fee simple, and the deed was at once recorded. In ~~1925~~1985, Y conveyed to Z in fee simple, and the deed was at once recorded. Then suppose in ~~1927~~1987 B conveyed to C in fee simple, the deed being at once recorded. In ~~1935~~1995, Z and C each has a marketable record title, but each is subject to the other. Hence, neither extinguishes the other, and the relative rights of the parties are determined independently of the act. C's title, therefore, should prevail.

5. Suppose, however, that the facts were the same except that B conveyed to C in ~~1937~~1997 instead of ~~1927~~1987. In that case, Z's marketable record title extinguished B's title in ~~1935~~1995, 30 years after the effective date of Z's root of title, and B's title is not revived by the conveyance in ~~1937~~1997.

30.10 QUITCLAIM DEED OR TESTAMENTARY RESIDUARY CLAUSE IN THIRTY-YEAR CHAIN

A recorded quitclaim deed or residuary clause in a probated will can be a root of title or a link in a chain of title, for purposes of a 30-year record title under the Marketable Record Title Act.

Authority: 16 O.S. §§71 & 78(e) & (f); L. Simes & C. Taylor, Model Title Standards, Standard 4.11, at 33-34 (1960).

Related Standards: Mich., 1.3; Neb., 52.

Comment: The Marketable Record Title Act defines "root of title" as a title transaction "purporting to create the interest claimed." See section 78(e). "Title transaction" is defined to include a variety of transactions, among which are title by quitclaim deed, by will and by descent. See Section 78(f).

A quitclaim deed can be a root of title to the interest it purports to create. Suppose there is a break in the chain of title, and the first instrument after the break is a quitclaim deed. Assume that the first recorded instrument in the chain of title is a patent from the United States to A, recorded in 1890, and that the next is a warranty deed from A to B in fee simple, recorded in ~~1910~~1940. Then, in ~~1915~~1975, there is a quitclaim deed from C to D purporting to convey "the above described land" to D in fee simple. Further assume that there are no other recorded title transactions or notices after this deed and that D is in possession, claiming to be the owner in fee simple. Under the Marketable Record Title Act, the ~~1915~~1975 deed is the root of title and purports to create a fee simple in D. Therefore, in ~~1945~~2005, D has a good title in fee simple.

Clearly the quitclaim deed can be a link in a chain of record title under the provisions of the act. See sections 71 and 78(f). If it can be an effective link, it must necessarily follow that it can be an effective "root" to the interest it purports to create.

D. LATEST TES COMMITTEE AGENDA

2010 AGENDA

(As of September 13, 2010)

[SEE MEETING DATES AND LOCATIONS BELOW]

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

Sub-Comm.	Std.	Status	Description

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

_____SEPTEMBER 17/TULSA_____

Epperson	**NA**	**Sep Report**	**LEGISLATIVE UPDATE** ***Brief presentation concerning:*** • ***Oklahoma Energy Independence Act (J. Noble)*** • ***Report of Uniform Laws Committee (K. Epperson)*** • ***New Uniform Abstract Certificate*** • ***New Abstractors' Rules***
McEachin **Luke** **Ogunbase** **Costello** **Evans** **Baker**	**30.1 et seq**	**Sep Draft**	**MRTA** ***A remaining question to be considered this year concerning the MRTA includes modernizing the dates in the examples provided.***
Astle **Doyle** **Wimbish** **Durbin**	**NEW**	**Sep Report**	**LLC'S SIGNING BY "PRESIDENT" OR "VICE PRESIDENT"** ***Did the most recent statutory changes approve the use of corporate type bylaws thereby allowing the recognition of the authority of "officers" to sign for an LLC, especially a non-Oklahoma LLC? Apparently, it is common practice for title insurance/closing companies in Oklahoma to accept such signatures.***

<u>McEachin</u> **Costello**	**24.12**	**Sep Report**	**MERS** ***We are working to add citations of authority to the existing Standard.***

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

<u>Noble</u> **Astle** **Orlowski** **Schomp (Munson?)**	**17.4**	**Aug App'd**	**"TRANSFER ON DEATH" DEED** ***We have some proposed clarifications for the existing Standard.***

<u>Astle</u> **Carson** **Rheinberger**	**12.3**	**Aug App'd**	**CONCLUSIVE PRESUMPTIONS…** ***We are working to revise a current Standard 12.3, relying on 16 O.S. Section 27A, to pass title where a power of attorney was relied upon to execute a documents for a <u>non-corporate entity</u>, but the POA is missing, and 5 years have passed.***

<u>Wimbish</u> **Astle**	**17.4**	**Apr. App'd**	**ESTATE TAX LIEN** ***Additional language was inserted reflecting the absence of an Oklahoma Estate Tax Lien for persons dying after Dec. 31, 2009?***

<u>Wimbish</u> **Astle**	**8.1 & 15.4**	**Feb. App'd**	**ESTATE TAX LIEN** ***Should additional language be inserted reflecting the absence of an Oklahoma Estate Tax Lien for persons dying after Dec. 31, 2009?***

<u>Evans</u> **Baker**	**7.2**	**Feb. App'd**	**MARITAL INTERESTS** ***In light of a recent Oklahoma Court of Appeals case (Hill v. Discover Bank), should this Standard be revised to recognize title to be valid where the owning spouse unilaterally conveys the homestead to the non-owning spouse, and where thereafter such grantee spouse conveys the homestead to a third party? Also, should the Standard be revised to show that title is valid where a non-title holding spouse fails to join on a conveyance of the homestead if it is to both spouses?*** ***[Epperson has published an article in the OBJ criticizing this Court holding]***

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

<u>Sullivan</u> **Orlowski**	**NEW**	**June** **Dormant**	**LEGAL DESCRIPTIONS** ***Arkansas has an entire Chapter devoted to Legal Descriptions. Should Oklahoma adopt a similar Chapter reflecting Oklahoma's law on the subject? DECISION WAS MADE TO NOT ADOPT SUCH A CHAPTER***

<u>Astle</u> **Carson** **Noble**	**25.3**	**May** **Dormant**	**LOT SPLIT** ***(1) There appears to be a requirement for approval of the remainder tract in <u>all</u> jurisdictions. WRONG.*** ***(2) There also appears to be an error in the Standard as to the size of a lot which would require lot split approval. WRONG.***

==========TABLED==========

<u>Soper</u> **Epperson**	**NA**	**July** **Tabled** **Until next leg. Session**	**LEGISLATIVE UPDATE** ***Brief presentation concerning proposed or pending legislation affecting real property titles.***

<u>Durbin</u> **Doyle** **Luke** **Savage**	**14.1**	**Sep** **Tabled to Next Year**	**LLC'S MAY OWN PROPERTY** **A *separate "series" LLC cannot own title to real property, under 18 O.S. Section 2054.4.***

<u>McEachin</u> **Luke** **Ogunbase** **Costello** **Evans** **Baker**	**30.1** **et seq**	**Aug** **Tabled to Next Year**	**MRTA** ***A remaining question to be considered concerning the MRTA includes misc. issues including how to handle "stray" deeds, and when is the MRTA "always" useable.***

<u>Hardwick</u> **Sullivan**	**7.2**	**July** **Tabled**	**MARITAL HOMESTEAD** ***Is it acceptable for a title examiner to rely upon either a***

Evans		**to Next Year at Sullivan's Request**	***recital in a deed or on an affidavit filed either with or after a deed, which deed is signed by one spouse but not the other, where such recital or affidavit asserts that such land is not the marital homestead? The instance involved is where the spouse who holds the entire title is the grantor or affiant.***

(???)	**23.1 (D)**	**Jan TABLE**	**JUDGEMENT LIENS…(D.) DURATION OF LIEN** ***Does the holding in Neil overturn Mahojah, so that it is necessary to record a Deficiency Order in the land records to have a 12 O.S. Section 706 lien, instead of relying solely on the recording of the Foreclosure Judgment in the land records to create the lien***

(???)	**NEW**	**Jan TABLE**	**ABSTRACTING-IN GENERAL** ***The Permanent Rules of the Oklahoma Abstractor's Board define what constitutes an Abstract of Title, including specifying which documents from certain offices are to be included in the abstract. Such Rules conflict with existing Title Examination Standards, including Federal Court and Bankruptcy Court pleadings, and the acceptability of a 30-Year MRTA Abstract. See: Rule 5:10-5-3 of the OAB Rules, at www.eppersonlaw.com.***

(???)	**30.13**	**Jan TABLE**	**ABSTRACTING-30 YEAR ABSTRACT** ***Due to the prior Regulations and a specific ruling by the State Auditor(who regulated the Abstractors until January 1, 2008), it appears that TES 30.13 which directs abstractors to prepare "short" "30-year" abstracts for the use of examining attorneys, is incorrect, and should be revised or deleted.***

(???)	**NEW**	**Jan TABLE**	**JUDGMENTS/DECREES & CONSTRUCTIVE NOTICE** ***Under the MRTA, the SLTA, and under the terms of the Uniform Abstractors Certificate, do documents that are <u>not</u> filed with the County Clerk (e.g., divorce and probate proceedings) constitute constructive notice and become part of the official chain of title. Also, if a judgment or decree – affecting title to real property -- is required by statute to be placed in the county clerk's land records in order to constitute constructive notice,***

			but has not been filed there, does the inclusion of such document in an abstract give to the examiner and the client actual notice of the same liens and ownership changes? If so, as of what date? Can you rely upon a decree as part of a chain of title, if it was never recorded in the land records?

(???)	**NEW**	**Jan TABLE**	**BASE TITLE INSURANCE POLICY** ***What is the title examiners' attitude towards relying upon a prior owner's title insurance policy as a "base" instead of an abstract, under 36 O.S. Section 5001?***

(???)	**NEW**	**Jan TABLE**	**QUIET TITLE THROUGH FORECLOSURE** ***Because the quiet title statutes require that any person seeking to quiet title must either be in current possession or must demand to be put in possession due to a current right of possession, can a mortgage foreclosure action be used to cure title defects that normally require a quiet title action, such as an omitted probate?***

(???)	**30.10**	**Jan TABLE**	**QUIT CLAIM DEED…** ***Can a warranty or quit claim deed, with this language: "All grantor's right, title and interest", constitute a "root of title" under the MRTA? See Reed v. Whitney, 1945 OK CIV APP 354 (warranty limited to interest actually owned), but also see Joiner v. Ardmore Loan and Trust Co., 1912 OK 464 (a grantor under a warranty deed is liable even if "both parties knew of the lack of title") . Should this Standard have a comment added, explaining this issue?***

COMMITTEE OFFICERS:

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Comm. Sec'y: Chris Smith, Edmond (405) 843-8448

Chris.smith.ok@gmail.com

(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2010\Agenda2010 09(Sep))

2010 Title Examination Standards Committee

(Third Saturday: January through September)

Time: 9:30 a.m. to 12 noon

Month	Day	City/Town	Location
January	16	Tulsa	Tulsa County Bar Center
February	20	Stroud	**Stroud Conference Center**
March	20	OKC	Oklahoma Bar Center (canceled)
April	17	Stroud	**Stroud Conference Center**
May	15	Tulsa	Tulsa County Bar Center
June	19	Stroud	**Stroud Conference Center**
July	17	OKC	Oklahoma Bar Center
August	21	Stroud	**Stroud Conference Center**
September	18	Tulsa	Tulsa County Bar Center

Tulsa County Bar Center
1446 South Boston
Tulsa, Oklahoma 74119-3612

Stroud Conference Center
218 W Main St.
Stroud, Oklahoma 74079

Oklahoma Bar Center
1901 N. Lincoln Blvd.
Oklahoma City, OK 73152-3036

APPENDICES

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

2. NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER REPORT

3. LIST OF THE LATEST 10 ARTICLES, BY KRAETTLI Q. EPPERSON (AVAILABLE ON-LINE)

APPENDIX 1

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

2009 Title Examination Standards Committee

Name	City	Office
Kraettli Epperson	Oklahoma City	Chair
Janet Sharp	Oklahoma City	Secretary
Dale Astle	Tulsa	
Rickey Avery	Oklahoma City	
Jason Baker	Tulsa	
Barbara Carson	Tulsa	
Alice Costello	Edmond	
Bill Doyle	Tulsa	
Alan Durbin	Oklahoma City	
Larry Evans	Tulsa	
Alex Haley	Idabel	
Martha Hardwick	Tulsa	
Scott McEachin	Tulsa	
Jeff Noble	Oklahoma City	
Ademuyiwa "Daniel" Ogunbase	Norman	
Faith Orlowski	Tulsa	
Nils Raunikar	Wilburton	
Henry Rheinberger	Oklahoma City	
Darin Savage	Norman	
Chris Smith	Oklahoma City	
Jason Alan Soper	Oklahoma City	
Keith Stitt	Tulsa	
Scott Sullivan	Oklahoma City	
Jack Wimbish	Tulsa	

APPENDIX 2

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER

(Effective July 31, 2010)

STATUS REPORT

State		Last Revised		Standards		
		Pre-2005	2005+	#Ch.	#Stands.	#Pgs.
1.	Arkansas	-	12-07-09	22	110	65
2.	Colorado	-	05-00-10	15	134	71
3.	Connecticut	-	01-12-09	30	151	471
4.	Florida	-	08-00-09	21	142	187
5.	Georgia	-	08-18-05	39	194	144
6.	Idaho	c. 1946	-	-	-	-
7.	Illinois	01-00-77	-	14	26	35
8.	Iowa	-	06-00-10	16	105	90
9.	Kansas	-	00-00-05	23	71	122
10.	Louisiana	00-00-01	-	25	233	99
11.	Maine	-	03-02-10	09	72	90
12.	Massachusetts	-	05-05-08	N/A	74	103
13.	Michigan	-	05-00-07	29	430	484
14.	Minnesota	-	11-14-09	N/A	97	85
15.	Mississippi	10-00-40	-	-	-	-
16.	Missouri	05-15-80	-	N/A	26	17
17.	Montana	c. 1955	-	N/A	76	78
18.	Nebraska	-	01-30-09	16	96	99
19.	New Hampshire	-	12-31-09	13	180	36
20.	New Mexico	00-00-50	-	06	23	05
21.	New York	01-30-76	-	N/A	68	16
22.	North Dakota	-	00-00-09	18	191	231
23.	Ohio	-	05-13-09	N/A	53	45
24.	Oklahoma	-	11-06-09	33	120	110
25.	Rhode Island	-	04-28-09	14	78	78
26.	South Dakota	06-21-03	-	N/A	66	58
27.	Texas	-	06-30-10	16	89	80
28.	Utah	06-18-64	-	N/A	59	13
29.	Vermont	-	09-25-08	28	43	61
30.	Washington	09-25-42	-	N/A	29	09
31.	Wisconsin	02-00-46	-	N/A	15	08
32.	Wyoming	07-01-80	-	22	81	99
Total		***13***	***19***			

Prepared by Kraettli Q. Epperson, Attorney-at-Law, OKC, OK
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APPENDIX 3

LIST OF THE LATEST 10 ARTICLES,
AUTHORED BY KRAETTLI Q. EPPERSON
(AVAILABLE ON-LINE)

2010

232. "Oil and Gas Title Examination Basic Terms", Energy Law Basics, The National Business Institute, Oklahoma City, Oklahoma (November 18, 2010)

230. "Legal Descriptions and Surveys: An Overview in Oklahoma", Oklahoma City University School of Law "Real Estate Development, Oklahoma City, Oklahoma (March 3, 2010)

229. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2008-2009", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 8, 2010)

228. "**Do Statutory Monetary Penalties, Arising due to a Lender's Failure to File a Mortgage Release, Apply to Constructive Mortgages and Fixtures Filings?**", The Oklahoma County Bar Association Briefcase, Part I: V. 42, No. 1 OCBA Briefcase 5 (January 2010), and Part II: V. 42, No. 2 OCBA Briefcase 5 (February 2010)

2009

227. "**The Elusive Legal Malpractice Statute of Limitations for Attorney Title Opinions**", The Oklahoma County Bar Association Briefcase, Part I: V. 41, No. 10 OCBA Briefcase 7 (October 2009), and Part II: V. 41, No. 12 OCBA Briefcase 7 (December 2009)

226. "**Marital Homestead Rights Protection: Impact of *Hill v. Discover Card?***", 80 The Oklahoma Bar Journal 2408 (November 21, 2009)

224. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2008-2009", Update on Law in Oklahoma, The Oklahoma Bar Association, Tulsa, Oklahoma (December 3, 2009), and Oklahoma City, Oklahoma (December 11, 2009)

222. "'Defensible Title' When Examining Oil and Gas Interests: An Overview of the Law in Oklahoma", The Real Property Tract, The Annual Oklahoma Bar Association Meeting Continuing Legal Education Program, Oklahoma City, Oklahoma (November 4, 2009)

221. "Partition Proceedings: Forms and Authority", The Mayes County Bar Association, Pryor, Oklahoma (October 13, 2009)

220. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2008-2009", Advanced Real Estate Law: Advanced Issues and Answers, The National Business Institute, Oklahoma City, Oklahoma (September 15, 2009)