UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY: STATUTES, REGULATIONS, CASES, ATTORNEY GENERAL OPINIONS & TITLE EXAMINATION STANDARDS: REVISIONS FOR 2007-2008

(Covering July 1, 2007 to June 30, 2008; Plus TES adopted Nov. 2007)

BY:

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TULSA TITLE AND PROBATE ASSOCIATION

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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: Real Property Litigation (Receiverships, Quiet Title, Condemnations, & Restrictions);
Condo/HOA Creation & Representation; and
Oil and Gas Subdivision Coordination, & 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); and
BSA: Vice Chair & Chair, Baden-Powell District, Last Frontier Council (2000-2007); former Cubmaster, Pack 5, & Assistant Scoutmaster, 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:

"A Status Report: On-Line Images of Land Documents in Oklahoma County" & "Where Are We Going Next in Electronic Filing", 36 Briefcase (OCBA) 7 & 8 (July & August 2004)
"Real Estate Homesteads in Oklahoma: Conveying and Encumbering Such Interest", 75 The Oklahoma Bar Journal 1357 (May 15, 2004)
"*Have Judgment Lien Creditors Become 'Bona Fide Purchasers'?*", 68 Oklahoma Bar Journal 1071 (March 29, 1997)*; and

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 Examination 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 grantee's 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 preceding June 30, 2008, 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 Appeals, (4) opinions from the Oklahoma Attorney General, and (5) Oklahoma Title Examination Standards adopted in November 2007.

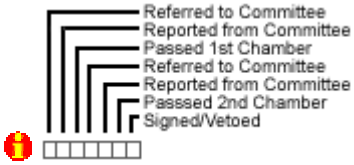
II. STATUTORY CHANGES

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

THE JOURNAL RECORD
LEGISLATIVE REPORT

Oklahoma County Clerk's Office
Bill Status Report
07-17-2008 - 08:44:01

- Indicates action since request date.



Track: Oklahoma County

HB 1453	Johnson, Rob Garrison	Relates to counties and county officers; creates Preservation and Accessibility of County Records Act; EMERGENCY.
	Remarks:	This bill creates a Task Force to study and make recommendations for digitizing County Clerk records in Oklahoma, making them accessible on the Internet, and establishing fees.
	Track Name(s):	Oklahoma County
	Bill History:	06-10-08 G Signed by the Governor (Chap: 0)
HB 2580	Hyman Ballenger	Relates to counties & information necessary for indexing by county clerks; requires certain information for legal descriptions.
	Remarks:	This is a County Clerk Association Bill which defines a properties "specific" legal description and may be described as "lot and block or quarter section". Their intent is to eliminate filings that cover whole sections when the filer is uncertain about the specific legal description. We are not sure how this will work in practice.
	Track Name(s):	Oklahoma County
	Bill History:	05-29-08 S Died pursuant to the rules
HB 2587	Braddock Lerblance	Relates to conveyances; creates Uniform Real Property Electronic Recording Act; authorizes & validates electronic documents; grants county clerk certain powers relating to recording documents; requires Archives & Records to adopt standards.

	Remarks:	This is model legislation from the National Conference of Commissioners on State Laws (NCCUSL)for the Uniform Real Property Electronic Recording Act.
	Track Name(s):	(Master List Only), Oklahoma County
	Bill History:	06-10-08 G Signed by the Governor (Chap: 0)
HB 2639	Peters Crain	Relates to probate procedure; creates the Non-Testamentary Transfer of Property Act.
	Track Name(s):	Oklahoma County
	Bill History:	04-28-08 G Signed by the Governor (Chap: 1)
HB 2726	Winchester Burrage	Relates to probate procedure & creditor claims against estates; modifies effect of failure to mail certain notice; provides certain notice; providing when certain time period for limitation of actions begins.
	Track Name(s):	Oklahoma County
	Bill History:	06-10-08 G Signed by the Governor (Chap: 0)
SB 1575	Jolley Worthen	Relates to abstracting & the Oklahoma Abstractors Law; modifies requirement relating to certain required set of abstract books or indexes.
	Remarks:	This bill defines records needed for an "abstract plant" as all documents affecting title to real property which are filed, recorded "and currently available for reproduction." The title has been stricken from this bill.
	Track Name(s):	Oklahoma County
	Bill History:	04-29-08 G Signed by the Governor (Chap: 0)
SB 1770	Lerblance Banz	Relates to revenue and taxation and delinquent property taxes by modifying procedures relating to county treasurer sale of certain property; modifies requirements for certain notice of sale of property; permits deposit of fees.
	Remarks:	County Treasurer's CGLC bill doing away with October lien sale. Amendments relate to additional repealers concerning the October Sale and includes an Emergency Clause upon passage.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 G Signed by the Governor (Chap: 0)
SB 1825	Ivester Braddock	Relates to property by creating the Oklahoma Uniform Trust Code; authorizes court intervention in certain circumstances; establishes certain requirements for spendthrift provision.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 H Died pursuant to the rules
SB 1953	Mazzei Terrill	Relates to revenue and taxation and the ad valorem tax; consolidates duplicate sections; EMERGENCY.

	Remarks:	CGLC Supports. When improvements are divided by taxing jurisdiction line they are valued in taxing jurisdiction where physical majority is located. The title was stricken from the bill. CGLC says to watch - there is a rumor this bill may change to something else.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 H Died pursuant to the rules
SB 1975	Corn Brannon	Relates to abstracting; makes language gender neutral; makes certain access to instruments of record for certain purpose only; prohibits selling of records for certain pupose.
	Remarks:	This bill has been amended and would prohibit any company holding a permit to build an abstract plant from selling copies of instruments of record from the County Clerk's Office for profit to the public over the Internet or other such forum. This does not affect abstract companies already in existence.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 G Signed by the Governor (Chap: 0)
SB 2150	Corn Brannon	Relates to fees; relates to county clerks by authorizing fees for electronic copies.
	Remarks:	We do not know who is behind this bill. This establishes a fee for furnishing "electronic" copies of records at $1.00 per page. The title was stricken from this bill.
	Track Name(s):	Oklahoma County
	Bill History:	04-25-08 H Died pursuant to the rules

- End of Report

III. REGULATORY CHANGES

APPROVED ABSTRACTOR'S REGULATIONS FROM THE OKLAHOMA ABSTRACTOR'S BOARD

Abstractors Board
General Provisions Emergency Rules
CHAPTER 10. SUBCHAPTER 1

[Approved by Governor: February 19, 2008]

CHAPTER 10. ADMINISTRATION OF ABSTRACTORS LAW

SUBCHAPTER 1. GENERAL PROVISIONS

5:10-1-1. Purpose
The rules of this chapter have been adopted for the purpose of implementing the Oklahoma Abstractors Act, Title 1, of the Oklahoma Statutes. These rules have been promulgated in order to establish criteria, fees, and procedures for the granting of certificates, permits, and licenses.

5:10-1-2. Definitions
The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Abstractor**" means the holder of a certificate of authority, temporary certificate of authority, permit, or abstract license.

"**Act**" means the Oklahoma Abstractors Act.

"**Board**" means the Oklahoma Abstractors Board.

"**Licensee**" means a person who holds a current abstract license.

5:10-1-3. Authority, interpretation, and severability of rules
The rules in this Chapter are adopted pursuant to the provisions the Oklahoma Abstractors Act, Title l of the Oklahoma Statutes, and the Administrative Procedures Act. Should a court having jurisdiction or the Attorney General of Oklahoma find any part of the rules of this Chapter to be inconsistent with the provisions of law as they presently exist or are hereafter amended, they shall be interpreted to comply with the statutes as they presently exist or are hereafter amended and the partial or total invalidity of any section or sections of this Chapter shall not affect the valid sections.

SUBCHAPTER 3. ABSTRACT LICENSES, CERTIFICATES OF AUTHORITY, AND PERMITS

5:10-3-1. Who must hold abstract license

(a) A holder of a certificate of authority or permit who is an individual or partner actively engaged in the process of preparing abstracts, shall also be required to have an individual abstract license.

(b) Any person employed by a holder of a certificate of authority or permit for the purpose of searching county records for compiling abstracts shall hold an abstract license. An employee whose sole function is to put the work product of others into typewritten or other readable form shall not be required to hold an abstract license.

(c) For all or any part of calendar year 2008 and for the following calendar years each initial application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars ($150.00).

(d) For all or any part of calendar year 2008 and for the following calendar years each renewal application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars ($150.00).

5:10-3-2. Examinations for abstract license

(a) The test for an abstract license shall be given at least quarterly and at such other times as and at such locations as designated by the Board. The Board shall set the test dates for the calendar year at the first regular meeting of the Board of each calendar year.

(b) Tests shall be graded either pass or fail. Seventy per cent (70%) of the questions must be answered correctly to pass. If failed, the test can be taken again in thirty (30) days, not to exceed three times in a calendar year.

5:10-3-3. Bonds required for permits and certificates of authority

1) **County records bond**

(A) Each application for a certificate of authority shall be accompanied by a bond concerning county records only.

(B) Each application for a permit shall be accompanied by a bond concerning county records only.

(C) The bond shall be valid for one (1) year and extend coverage to the various county offices for damages by reason of mutilation, injury, or destruction of any record or records of the several county offices to which the applicant may have access.

(D) If a surety bond is provided it shall be issued by a surety company licensed to do business in the State of Oklahoma.

(E) The original bond shall be filed in the office of the Board. The Board or a person designated by the Board to perform such duties shall mail a certified copy of the bond to the County Clerk's office for filing.

(2) Errors and omissions bond or insurance

(A) Each application for a certificate of authority shall be accompanied by a bond or insurance to pay damages for possible errors in abstracts prepared by the holder of the certificate of authority

(B) If coverage for damages for possible errors in abstracts prepared by the holder of a certificate of authority will be by bond, then the bonds shall be on forms either prescribed by, or approved in advance by the Board.

(C) Upon compliance with the provisions of Section 27 of Title 1 of the Oklahoma Statutes and the rules set out in this Chapter the Board shall accept either a personal or surety bond by issuing a written statement of acceptance;

(D) A personal bond must provide that the certificate of authority or permit holder be the obligor and that the Board be the obligee. The personal bond, conditioned on the obligor performing its duties without error, must be accompanied by either cash or a Certificate of Deposit delivered to the Board.

(E) A Certificate of Deposit must be issued by a federally insured financial institution in the State of Oklahoma and must have a maturity term of a minimum of one year.

(I) The Certificate of Deposit shall on its face show either the Board as its holder or it shall be endorsed in favor of the Board.

(ii) The original Certificate of Deposit shall be delivered to the Board with an executed personal bond form.

(F) Interest on such Certificate of Deposit shall be paid to the obligor. Payment to a third party will be allowed on a personal bond upon presentation of either a final order of a District Court of the State of Oklahoma finding that the conditions of the bond have not been met, or upon written settlement with the obligor. Prior to payment unless the obligor presents to the Board either a surety bond or an alternative method of securing the personal bond equal to the amount of the claim against the bond the Board shall take action to suspend the certificate of authority of the obligor.

(G) The personal bond and a facsimile of the Certificate of Deposit become part of the file of the holder of the certificate of authority or permit for whom they are given. These documents are available for examination and copying by the public.

5:10-3-4. Application fees for Permits, Certificates of Authority, and Renewals

(a) For all or any part of calendar year 2008 and for the following calendar years a separate application and fee shall be submitted for each certificate of authority and permit, or renewal thereof, for each county in which the applicant desires to do business. The fee shall be as follows:

(1) County Population of less than 10,000	$ 400.00
(2) County Population of 10,000 but less than 30,000	$ 800.00
(3) County Population of 30,000 but less than 60,000	$1,200.00
(4) County Population of 60,000 but less than 100,000	$1,600.00
(5) County Population of 100,000 but less than 200,000	$2,400.00
(6) County Population of 200,000 or more	$3,200.00

5:10-3-5. Licensing associations, corporations, partnerships

An applicant for permit or certificate of authority issued to an association, partnership, corporation or other entity shall be required to comply with the same laws, rules, regulations, and orders as individuals. Such entities shall designate in writing an individual as service agent to receive service of summons and notice of hearings or state on the application form that it will accept service at its business address on the application form.

5:10-3-6. Transfer of Certificate of Authority

An applicant for a transfer of a certificate of authority by an individual, association, partnership, corporation, or other entity shall be required to comply with the same laws, rules, regulations, and orders applicable to the previous holder of the certificate of authority. The applicant shall also provide an affidavit as to due diligence efforts made to determined that the abstract plant acquired meets all the requirements of the Act.

5:10-3-7. Licensing nonresidents

(a) Anyone who is not a resident of the State of Oklahoma but who obtains a certificate of authority, permit or abstract license shall:

(1) give written consent that actions, suits at law and administrative proceedings may be commenced against such nonresident in any county in this state where any cause of action may arise or be claimed to have arisen out of any actions occurring as a result of alleged activities under the Act. Such consent shall be applicable to a nonresident, his agents or employees; and
(2) appoint, in writing, a service agent in the State of Oklahoma to receive service of summons or notice of hearing.

(b) A nonresident shall designate a service agent in accordance with provisions of Section 2004 of Title 12 of the Oklahoma Statutes.

5:10-3-8. Any application for renewal of a certificate or license received prior to the effective date of these rules shall be considered timely filed and the certificate or license for which renewal is being applied for shall continue in full force and effect until revoked or renewed by the Board.

5:10-3-9. Forms

(a) **Certificate of Authority**.

(1) The Board shall prescribe the initial application form for a certificate of authority to be used when an entity applies for a certificate of authority for the first time.

(2) The Board shall prescribe the form to be used for a temporary certificate of authority.

(3) The Board shall prescribe the renewal form to be used for the annual renewal of the certificate of authority.

(4) The Board shall prescribe the transfer form to be used when the ownership of holder of a certificate of authority changes.

(b) **Permit**.

(1) An application for a permit prescribed by the Board shall be used when an applicant desires to engage in the business of abstracting and does not hold a current certificate of authority in the appropriate county.

(2) When applying for a permit the applicant must include an affidavit on a form prescribed by the Board prepared by the appropriate District Court Clerk and County Clerk certifying the completeness or incompleteness of the county records.

(3) A general statement of the law, and instructions directing how the forms should be completed shall be included with each application for a permit.

(4) If the affidavits of the District Court Clerk or the County Clerk filed with the application for permit indicate that the records in either office are incomplete or if after an administrative hearing , it is determined that the records in those offices are incomplete~~;~~ then the applicant shall obtain all those records otherwise unavailable from the offices of the District Court Clerk and County Clerk prior to the issuance of the permit.

(5) The applicant for a permit shall provide the Board with proof that each person engaged in the search of county records for the purpose of establishing a plant is a holder of an abstract license.

(c) License. An application for an abstract license is used when an individual applies for an abstract license for the first time. A renewal form is used for the annual renewal of an abstract license.

(d) Renewal. An application for renewal shall be submitted on an application for renewal form prescribed by the Board with the appropriate fee.

(e) Bonds. A certificate of authority holder wishing to take advantage of the alternative pursuant to rule 5:10-3-3 of this Chapter, must use the Board bond form unless prior approval is received from the Board for the use of another form.

(f) Other forms. The Board shall provide such other forms as necessary to implement the provisions of the Act.

SUBCHAPTER 5. REGULATION OF LICENSEES, CERTIFICATE HOLDERS, AND PERMIT HOLDERS

5:10-5-1. Inspections

(a) The Board shall cause inspections of records and premises of all permit holders and certificate holders at the discretion of the Board.

(b) Upon request from the Board, a permit holder or certificate holder shall provide access to the records and premises of their business. Failure to do so in a timely manner shall constitute an offense subject to fine, suspension, revocation or such other sanction as may be determined by law.

(c) Certificate holders shall maintain for five (5) years a copy of the certificate page of such abstract, evidence of research, the certificate page of any abstract used for duplication, and billing information.

5:10-5-2. Penalties for failure to pay renewal fees

The Board shall assess and collect penalties against licensees and certificate holders for the failure to pay renewal fees. Such penalties shall be posted in the Board office. If the amount of the penalty is changed, thirty (30) days notice shall be given before the change shall be effective.

5:10-5-3. Preparation of abstracts

(a) **Type of Abstract**. A certificate of authority holder shall cause the preparation of an abstract which shall cover a fee simple estate, or upon the request of a customer, a fee simple estate less and except oil, gas, coal, and other mineral interests. The abstract certificate, caption sheet, or both shall reflect the nature of the abstract along with an appropriate disclaimer regarding that which is excluded.

(b) **Contents of Abstract**. For the time period covered by the certification, an abstract shall include the following:

(1) all instruments that have been filed for record or have been recorded in the Office of the County Clerk which legally impart constructive notice of matters affecting title to the subject property, any interest therein or encumbrances thereon;

(2) the records of the District Court Clerk and the County Clerk that disclose executions, court proceedings, pending suits, liens of any kind affecting the title to said real estate;

(3) judgments or transcripts of judgments against any of the parties appearing within the chain of title of the abstract, either indexed and docketed prior to October 1, 1978, on the judgment docket of the District Court Clerk or filed for record or recorded on or after October 1, 1978, in the Office of the County Clerk of said county; and

(4) all ad valorem tax liens due and unpaid against said real estate, tax sales thereof unredeemed, tax deeds, unpaid special assessments certified to the Office of the County Treasurer, due and unpaid, tax sales thereof unredeemed, and tax deeds given thereon and unpaid personal taxes which are a lien on said real estate.

(c) Federal Court Records. For property located in Muskogee, Okmulgee, Oklahoma, and Tulsa counties, for the time period covered by the certification, an abstract or special certificate shall include the records of the Clerk of the United States District Court and the records of the Clerk of the United States Bankruptcy Court in Muskogee Okmulgee, Oklahoma, and Tulsa counties, respectively, that disclose:

(1) executions, court proceedings, pending suits and bankruptcy proceedings in said courts affecting title to the subject property;

(2) judgments or transcripts of judgments against any of the parties appearing within the chain of title of the abstract, either indexed and docketed prior to October 1, 1978 on the judgment docket of the Clerk of the respective United States District Court or filed for record or recorded on or after October 1, 1978 in the office of the County Clerk of the respective county, affecting title to said real estate.

(d) **Other Services**. Any service performed by the holder of a certificate of authority that does not meet the standard established in the Act and the rules of the Board shall not be designated an "abstract" and shall not include an abstract certificate.

5:10-5-4. Minimum standards for preparation of abstracts.

(a) Copies of documents included in an abstract of title prepared by a holder of a Certificate of Authority shall be as legible as the source document on file in the offices of the County Clerk or the District Court Clerk except for source documents larger than 8 ½" x 14".

Abstractors Board
General Provisions Emergency Rules
[Approved by Governor: April 19, 2008]

TITLE 5. OKLAHOMA ABSTRACTORS BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1 – General Provisions [NEW]
5:1-1-1 through 5:1-1-3 [NEW]
Subchapter 3 – Administrative Operations [NEW]
5:1-3-1 through 5:1-3-6 [NEW]
AUTHORITY:
Title 1, Oklahoma Statutes, Section 22 *et seq.,* "Oklahoma Abstractors Act"
DATES:
Adoption:
March 6, 2008
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
None.
INCORPORATIONS BY REFERENCE:
None.
FINDING OF EMERGENCY:
Imminent peril exists to the preservation of the public health, safety, or welfare and a compelling public interest requires these emergency rules to be adopted, for the reason that these rules provide for procedures to be established to supplement and complete the Oklahoma Abstractors Act. Without such emergency rules, the Board cannot effectively and efficiently embark upon the regulation, licensure, and administration of those holders of Certificates of Authority, applicants for Permits and Licensees, including the filing of forms and complaints.
ANALYSIS:
The proposed rules provide for key definition of terms covered under the statute. It further sets forth the general administration of the office and the conduct of its daily business, including its physical address, mailing address, phone number, and business hours. These emergency rules are necessary to establish the office and its accessibility to the public.
CONTACT PERSON:
Monica Wittrock, Chairman (405) 232-3258

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. §253(D):

SUBCHAPTER 1. GENERAL PROVISIONS

5:1-1-1. Purpose

The Rules of this Title are provided for the purpose of interpreting and implementing the Oklahoma Abstractors Act, as set out in Title 1 of the Oklahoma Statutes, which established the Oklahoma Abstractors Board and conferred upon the Board the responsibility for administering and enforcing the Act.

5:1-1-2. Definitions

In addition to the terms defined in the Oklahoma Abstractors Act, the following defined words and terms shall be applied when implementing the Act and rules adopted by the Board.

5:1-1-3. Authority, interpretation, and severability of rules

The rules in this Chapter are adopted pursuant to the provisions of the Oklahoma Abstractors Act, Title l of the Oklahoma Statutes, and the Administrative Procedures Act. Should a court having jurisdiction or the Attorney General of Oklahoma find any part of the rules of this Chapter to be inconsistent with the provisions of law as they presently exist or are hereafter amended, they shall be interpreted to comply with the statutes as they presently exist or are hereafter amended and the partial or total invalidity of any section or sections of this Chapter shall not affect the valid sections.

SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

5:1-3-1. Powers and duties

The powers and duties of the Oklahoma Abstractors Board are set forth in the Oklahoma Abstractors Act, Title l of the Oklahoma Statutes.

5:1-3-2. Principal office; hours

The principal office of the Oklahoma Abstractors Board is 2401 Northwest 23rd Street, Suite 4, Oklahoma City, Oklahoma, 73107- 0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076. The office is open Monday through Friday from 8:00 A.M. until 5:00 P.M .except Saturday, Sunday and legal holidays.

5:1-3-3. Communications

All communication shall be in writing and addressed to the Board at the principal office of the Board unless the Board directs otherwise.

5:1-3-4. Availability of records; copies

Copies of rules, regulations, and other written statements of policy relating to abstract licenses, holders of a certificate of authority or permit, adopted by the Board in the discharge of duties and all final orders, decisions, and opinions will be available for public inspection at the principal office during stated office hours. Copies of the official records may be made and certified by the Board or a person designated by the Board to perform such duties upon prepayment of the copying fee as authorized in the Oklahoma Open Records Act, which shall be

posted in the office of the Board. All material in the office of the Board which is protected from publication by State and Federal law shall not be released.

5:1-3-5. Adoption, amendment or repeal of rule All interested persons may ask the Board to promulgate, amend, or repeal a rule. Such request shall be in writing and filed with the Board. The request shall fully set forth the reasons for its submission; the alleged need or necessity therefore; whether the proposal conflicts with any existing rule; and what statutory provisions, if any, are involved. Such request shall be considered by the Board. If the Board approves the proposed change, notice will be given that such proposal will be formally considered for adoption. If, however, the Board initially determines that the proposal or request is not a necessary rule, amendment, or repeal, the same will be refused and the decision reflected in the records of the Board. A copy will be sent to the person who submitted the request.

5:1-3-6. Declaratory rulings

Any person who may be directly affected by the existence or application of any of the public rules may request in writing an interpretation or ruling regarding the application of such rule to a particular set of facts. Any such request shall state sufficient facts and the particular rule to which those facts should be applied. The request will be reviewed by the Board. The Board will make a final determination of the interpretation or ruling and that interpretation of the rule will be furnished in writing within a reasonable time to the person making the request.

Abstractors Board
General Provisions Emergency Rules
[Approved by Governor: April 19, 2008]

TITLE 5. OKLAHOMA ABSTRACTORS BOARD
CHAPTER 20. COMPLAINTS AND ENFORCEMENT

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1 – General Provisions [NEW]
5:20-1-1 through 5:20-1-5 [NEW]
Subchapter 3 – Complaint Investigation Procedures [NEW]
5:20-3-1 through 5:20-3-2 [NEW]
Subchapter 5 – Formal Complaint Procedures [NEW]
5:20-5-1 through 5:30-5-9 [NEW]
AUTHORITY:
Title 1, Oklahoma Statutes, Section 22 *et seq.,* "Oklahoma Abstractors Act"
DATES:
Adoption:
March 6, 2008
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2009, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
None.
INCORPORATIONS BY REFERENCE:
None.
FINDING OF EMERGENCY:
Imminent peril exists to the preservation of the public health, safety, or welfare and a compelling public interest requires these emergency rules to be adopted, for the reason that these rules provide for procedures to be established to supplement and complete the Oklahoma Abstractors Act. Without such emergency rules, the Board cannot effectively and efficiently embark upon the regulation, licensure, and administration of those holders of Certificates of Authority, applicants for Permits and Licensees, including the filing of complaints, conducting investigations, and enforcing the Oklahoma Abstractors Act.
ANALYSIS:
The proposed rules provide for key definition of terms covered under the statute. It further sets forth the general procedures for the filing of a complaint, the investigation of a complaint, resolution of complaints, instituting a formal complaint, and the hearings process, including due process. These emergency rules are necessary to establish the procedures for the public and other licensees to file a complaint, and the process for prosecution of same. These are necessary to establish the basic investigation, administrative hearing and resolution procedures.

CONTACT PERSON:

Monica Wittrock, Chairman (405) 232-3258

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. §253(D):

SUBCHAPTER 20. GENERAL PROVISIONS

5:20-1-1. Administrative Procedures Act

The procedure for complaints, notice, hearing procedures, and regulation of matters covered by the rules of this Chapter shall be governed by the Administrative Procedures Act, and any conflict between the provisions of this Chapter and the Act, the Act shall govern.

5:20-1-2. Filing complaints

(a) Any person having a complaint, which alleges violation or noncompliance with the Oklahoma Abstractors Act or the rules of the Board implementing that act, may address the complaint to the Board at its principle office.

(b) The complaint shall be in writing and signed by the complainant. It shall contain a clear and concise statement of the facts, including the names, addresses significant to the complaint, and sufficient information to reveal the alleged violations and the facts on which the alleged violations are based.

(c) When a complaint is the result of information contained in a published source, an original copy of the publication with date published and full name of the publishing entity shall be filed with the Board.

(d) In the event a complaint is received by an individual member of the Board or any member of the Board staff, the information shall be forwarded to the Board office for referral to the Enforcement Committee in accordance with the procedures adopted by the Board for processing other complaints received.

(e) The individual against whom the complaint has been filed shall be notified of the complaint under investigation and may file a response to the complaint within fifteen (15) business days of receipt of notice of the filing of the complaint.

(f) The Enforcement Committee shall provide a quarterly report to the Board regarding the status of each pending complaint.

(g) Any individual who has filed a complaint may request to be notified of the final disposition of the matter**.**

5:20-1-3. Investigators

(a) The Board may appoint one or more individuals to investigate complaints received alleging violations of the Act or the rules of the Board.

(b) An individual appointed as an investigator may be a volunteer who serves without pay or an individual hired to conduct the investigation. Any individual serving as an investigator shall serve at the pleasure of the Board.

(1) Individuals who are holders of a certificate of authority, abstract license, or permit shall be eligible to serve as Investigators. Any such individual shall provide sufficient

information to the Board to assure no conflict of interest exists in the conduct of an investigation the individual is conducting.

(2) Other individuals may be appointed as investigators subject to review of their qualifications as they may be significant to the particular type of investigation being conducted.

5:20-1-4. Special prosecutors

(a) The Board may appoint a special prosecutor to work with the Enforcement Committee on each complaint under investigation.

(b) The Board may utilize lawyers licensed to practice law in Oklahoma to serve as special prosecutors in formal proceedings before the Board.

(c) An individual serving as special prosecutor shall not serve as legal counsel to the Board in the same formal proceeding.

5:20-1-5. Cost of investigations

(a) Investigators and Special Prosecutors may be compensated at a rate established by the Board on a case by case basis.

(b) Investigators and Special Prosecutors may be reimbursed for expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

SUBCHAPTER 3. COMPLAINT INVESTIGATION PROCEDURES

5:20-3-1. Enforcement committee procedures

(a) All complaints received by the Board, shall be referred to the Board Enforcement Committee for recommendation for action.

(b) The Enforcement Committee shall be comprised of at least two (2) members of the Board appointed by the Chairman. In the absence of the Chairman of the Board appointing a Chairman of the Enforcement Committee, the members of the Enforcement Committee shall choose their Chairman.

(c) Upon receipt of the complaint and information pertaining to the complaint, the Enforcement Committee may make appropriate inquiry to verify the information received.

(d) The Board may obtain a criminal record check of any applicant from the Oklahoma State Bureau of Investigation or other law enforcement sources.

(e) Upon completion of the preliminary inquiry, the Enforcement Committee shall take one (1) or more of the following actions:

(1) Recommend to the Board that the investigation should be terminated because it appears:

(A) there has been no violation of the law or rules, or

(B) there is insufficient evidence to support any allegation of a violation.

(2) Attempt an informal resolution of the allegations of violations contained in the information received.

(3) Require further investigation.

(4) Hold the file in abeyance pending receipt of information as a product of an investigation or hearing by another state or federal agency.

(5) Recommend a specific action by the Board.

5:20-3-2. Responsibility of investigators

(a) Upon referral from the Enforcement Committee, an investigator shall determine whether there exists sufficient cause to believe that misconduct has occurred which justifies the institution of formal proceedings. Such determination shall be presented to the Enforcement Committee in a report written and signed by the investigator.

(b) Such report shall contain a summary of the evidence, including any material provided by the accused, conclusions of fact, specific reference to applicable laws and rules, and recommendation with respect to institution of formal proceedings.

(c) All investigations shall be conducted in a timely manner.

(d) Upon conclusion of any investigation, the investigators shall promptly report the results to the Enforcement Committee.

SUBCHAPTER 5. FORMAL COMPLAINT PROCEDURES

5:20-5-1. Filing of formal complaint

(a) The Enforcement Committee and the special prosecutor shall determine if a formal complaint should be filed.

(b) In the event the Enforcement Committee and the special prosecutor do not agree on whether a formal complaint should be filed, the Chairman of the Enforcement Committee shall prepare a report for the Board. The Board shall make the final determination regarding further action.

(c) The formal complaint shall be signed by the special prosecutor or the Chairman of the Enforcement Committee. In the event the special prosecutor and the Enforcement Committee do not agree, the Chairman of the committee shall sign the formal complaint.

(d) The formal complaint shall include a concise statement of the allegations and particular sections of the Act or rules of the Board which are involved.

5:20-5-2. Violations by holders of a certificate of authority, abstract license, or permit

(a) In the event the investigation of an allegation against a holder of a certificate of authority, abstract license, or permit concludes that the individual against whom the complaint has been filed is in violation of the Act or the rules of the Board, the Board shall take any authorized action to protect the public from the unauthorized or illegal action of the certificate, license or permit holder.

(b) The Chairman of the Board shall set a time and place for the hearing of the formal complaint. Notice of the hearing shall be sent to the individual against whom the complaint has been filed not less than twenty (20) days from the date of the hearing at the last known address as shown in the official records of the Board.

(c) The person against whom the complaint has been filed shall be provided with any material information including any staff memoranda or data to be relied on by the Board.

(1) At the hearing, the person against whom the formal complaint has been filed shall be afforded an opportunity to contest the reports and other materials referenced.

(2) The experience, technical competence, and specialized knowledge of the members of the Board may be utilized in the evaluation of the evidence.

5:20-5-3. Formal complaint hearing procedures

(a) Hearings will be conducted by one of the following methods, determined by the Board before the hearing begins:

(1) By the Board;

(2) By any member of the Board or a designee of the Board acting as a hearing examiner or Administrative Law Judge; or

(3) By an attorney licensed to practice law in this state appointed by the Board to act as a hearing examiner or Administrative Law Judge.

(b) All oral proceedings shall be electronically recorded.

(1) The record shall be transcribed upon request of any party to the proceeding.

(2) All costs of such transcription shall be paid in advance by the requesting party.

(3) Upon approval of the Chairman of the Board, the accused, may use a licensed court reporter to transcribe the hearing. The cost of such reporter shall be paid by the accused.

(c) The hearing record of any formal proceeding shall be open to the public.

5:20-5-4. Standards for making decision

(a) The Board may take notice of:

(1) Judicially cognizable facts, and

(2) Generally recognized technical or scientific facts within the specialized knowledge of one or more members of the Board.

(b) The standard of proof in all hearings shall be clear and convincing evidence.

(c) The Board shall consider past disciplinary action taken against any accused found guilty in any present proceeding. Such past conduct shall not be evidence of guilt in the present proceeding but will be considered only in determining appropriate sanctions to be imposed by the Board in the present proceeding.

(d) Unless precluded by law, the accused may waive any right granted in the law and proceed by stipulation, agreed settlement, consent order, or default. No provision of this section shall be construed as prohibiting the Board from suspending, or holding in abeyance, any formal proceeding pending the outcome of informal negotiation or informally agreed upon terms.

(e) All orders shall be in writing and state findings of fact, conclusions of law, and actions to be taken. Final orders shall state their effective date.

5:20-5-5. Subpoena of witness, documents, or things

(a) In all cases the Board may issue subpoena or subpoena *duces tecum* where a party desires to compel the attendance of witnesses after a complaint has been filed.

(b) When the party, or his attorney, desires to have witnesses subpoenaed to appear before the hearing examiner, a request in writing shall be made by such party or his attorney, giving the name and correct address of any such witness.

(c) The requesting party shall pay the cost of service.

5:20-5-6. Discipline for violations by applicants

(a) An applicant for an abstract license who is alleged to have violated the Act, the rules of the Board, or who subverts or attempts to subvert the examination process shall be subject to disciplinary action by the Board.

(b) Failure of any applicant to cooperate with an investigation conducted by the Board shall result in denial of the application.
(c) Upon the determination that the applicant is guilty of the allegations, the Board may impose one (1) or more of the following disciplinary measures on the applicant:

(1) Withhold the grades on the examination;
(2) Declare the scores on the examination invalid;
(3) Disqualification the from holding a certificate of authority, or license permanently or for a specified period of time; or
(4) Impose other authorized penalties.

5:20-5-7. Violations by individuals who do not hold a certificate of authority, license or permit

(a) In the event the investigation of an allegation against an individual who is not a holder of a certificate or abstract license concludes that the accused is in violation of the Act or rules of the Board and that action should be taken to stop the violation, the Board may designate a member of the Board, staff member, or other individual acting for the Board to:

(1) Send written notice of the accusation, supporting documentation and a copy of the Complaint and Notice of Hearing, to be held not later than sixty (60) days following such notice, to the accused by certified mail, restricted delivery, return receipt requested. Notice may also be given by personal service upon the person of the accused in a manner authorized by the statutes of the State of Oklahoma for service of process in a civil proceeding;
(2) Provide the accused with a copy of the Act and rules of the Board along with its notification of the accusation and Complaint and Notice of Hearing.

(b) The Board, at a full and formal hearing, shall make a final determination of the accusations against the accused and issue such permanent cease and desist order, fine, penalty or other action as authorized by the Act and the rules of the Board.

5:20-5-8. Final orders

(a) A final order shall be in writing and shall include separate statements of the findings of fact and conclusions of law.
(b) Findings of fact shall be accompanied by a concise and explicit statement of the evidence supporting the findings. The order shall include a ruling on proposed findings of fact submitted by a party to the proceeding.
(c) A copy of the final order shall be delivered or mailed forthwith to each party or to their attorney of record as soon as practicable.

5:20-5-9. Rehearings

(a) An application for rehearing may be made in writing within ten (10) days of the date of the final order. The petitioner shall set forth one (1) or more of the following as grounds in the rehearing request:

(1) newly-discovered or newly-available evidence, relevant to the issues;
(2) need for additional evidence to adequately develop the facts essential to a proper decision;
(3) probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the order;

(4) need for further consideration of the issues and the evidence in the public interest; or

(5) showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(b) Nothing in this Subchapter shall prohibit the Board from rehearing, reopening or reconsidering a matter at any time, on the grounds of fraud practiced by the prevailing party, procurement of perjured testimony, or fictitious evidence, and in accordance with other statutory provisions applicable to the Board.

All interested persons may ask the Board to promulgate, amend, or repeal a rule. Such request shall be in writing and filed with the Board. The request shall fully set forth the reasons for its submission; the alleged need or necessity therefore; whether the proposal conflicts with any existing rule; and what statutory provisions, if any, are involved. Such request shall be considered by the Board. If the Board approves the proposed change, notice will be given that such proposal will be formally considered for adoption. If, however, the Board initially determines that the proposal or request is not a necessary rule, amendment, or repeal, the same will be refused and the decision reflected in the records of the Board. A copy will be sent to the person who submitted the request.

5:1-3-6. Declaratory rulings

Any person who may be directly affected by the existence or application of any of the public rules may request in writing an interpretation or ruling regarding the application of such rule to a particular set of facts. Any such request shall state sufficient facts and the particular rule to which those facts should be applied. The request will be reviewed by the Board. The Board will make a final determination of the interpretation or ruling and that interpretation of the rule will be furnished in writing within a reasonable time to the person making the request.

IV. CASE LAW

LIST OF CASES

TOPIC	CASE	OKLAHOMA CITATION	DECIDED	MANDATE
1. Mortgage Release Penalty	Rhynes v. EMC Mortgage Corporation	2007 OK CIV APP 82	08/03/07	08/31/07
2. Partition Procedures	Willis v. Willis (2007 OK CIV APP 85)	2007 OK CIV APP 85	08/17/07	09/13/07
3. Probate Claims Pursuit	In the Matter of the Estate of Bleeker (2007 OK 68)	2007 OK 68	09/18/07	
4. Attorney's Lien	Mehdipour v. Holland (2007 OK 69)	2007 OK 69	09/25/07	
5. Vendee's Lien	Gonzalez v. Citizens Security Bank and Trust Company (2008 OK CIV APP 3)	2008 OK CIV APP 3	09/28/07	01/11/08
6. Title by Acquiesence	Eubanks v. Anderson (2008 OK CIV APP 13)	2008 OK CIV APP 13	10/19/07	02/07/08
7. Partition Action	Rodgers v. Twedt (2008 OK CIV APP 11)	2008 OK CIV APP 11	11/06/07	02/07/08
8. Nonjudicial Marketable Title Procedures Act	Stump v. Cheek (2007 OK 97)	2007 OK 97	12/12/07	
9. Deed Interpretation	Moss v. Moss (2008 OK CIV APP 2)	2008 OK CIV APP 2	12/14/07	01/11/08
10. Deficiency Judgment	First United Bank and Trust Company, Pauls Valley v. Wiley (2008 OK CIV APP 39)	2008 OK CIV APP 39	12/19/07	04/18/08
11. Advalorem Assessment	Liddell v. Heavner (2008 OK 6)	2008 OK 6	01/29/08	
12. Advalorem Assessment	In the Matter of the 2005 Tax Assessment of Real Property (2008 OK 7)	2008 OK 7	01/29/08	
13. Condemnation	State ex rel. Department of Transporatation v. Mehta (2008 OK CIV APP 25)	2008 OK CIV APP 25	02/11/08	03/14/08
14. Fee Simple Determinable	Rox Petroleum, L.L.C. v. New Dominion, L.L.C. (2008 OK 13)	2008 OK 13	02/12/08	
15. Condemnation	City of Midwest City v. House of Realty, Inc. (2008 OK 28)	2008 OK 28	04/01/08	

1. **MORTGAGE RELEASE PENALTY**

(Penalty Statute Does Not Apply to Fixture Filings):

RHYNES v. EMC MORTGAGE CORP., 2007 OK CIV APP 82, 168 P.3d 251 (decided 08/03/07; mandate issued 08/31/07): The Oklahoma Court of Civil Appeals affirmed the trial court on a summary judgment which interpreted the language of 46 O.S. § 15. This § 15 requires: *"Any **mortgage on real estate** shall be released by the holder of such mortgage within fifty (50) days of the payment of the debt secured by the mortgage…".* (emphasis added) The trial court held that such penalty statute did not apply to the release of fixtures filings. The appellate court said: *"Because we conclude the liens created by such* [UCC fixture] *filings* [covering two mobile homes affixed to the mortgaged real property] *are not within the language of § 15, we affirm."* The appellate court stated: *"Oklahoma courts have long held that § 15 is a penal statute and that it must be strictly construed, which as applied to § 15, means refusing to extend the law by implication or equitable considerations and confining its operations to cases clearly within the letter of the statute, as well as within its spirit or reason."* The appellate court relied heavily upon an earlier Oklahoma Supreme Court decision and stated that, based on such strict construction limitation on determining the applicability of this statute, *"Section 15's predecessor did not apply to a warranty deed given as security for payment of a debt although by law it is deemed a mortgage…",* and cited such earlier decision which makes the following statement: *"That section does not contemplate the release of mortgage liens, but the release of the recorded mortgage after the lien has been satisfied by payment of the debt for the purpose of removing a cloud from the record title. It applies to mortgages only."* Bullington v. Lowe, 1923 OK 978, paragraph 7, 221 P. 502, 503 [Note: (a) the *Bullington* opinion acts as if what is being

required by this statute to be released is a document labeled "mortgage" rather than releasing a "mortgage lien", as if the release of the former "mortgage" is being required for some purpose other than to clear the title by achieving the release of the later "mortgage lien", and (b) it disregards clear legislative declarations that certain instruments are to be deemed a "mortgage" (even though not originally labeled one), by concluding that an instrument which is by law deemed a mortgage for all purposes shall not be deemed a mortgage for the purposes of this penalty statute because it was not really a mortgage but is only deemed a mortgage.]

2. PARTITION PROCEDURES

(Failure to Appoint Commissioners is an Abuse of Discretion and is Fundamental Error, Even if Error is Not Preserved)

WILLIS v. WILLIS, 2007 OK CIV APP 85, 168 P.3d 255 (decided 08/17/2007; mandate issued 09/13/2007): The partition in kind of real property means the ownership of the actual land was divided between the parties, instead of there being a sale and a distribution of the proceeds of sale. The trial court allowed such distribution in kind, based upon a survey – dividing the land into two parts -- submitted to the court by one of the two owners, which survey was not objected to by the other party in a timely way. No commissioners were appointed and, consequently, no commissioners' report was made determining whether that such division in kind could be made without doing "manifest injustice". On appeal, the intermediate appellate court reversed the trial court and concluded that even in the face of the failure of the losing party to timely object to the trial court's failure to appoint commissioners, the trial court's refusal to grant a new trial, as requested by the losing party, was (a) an abuse of discretion, and (b) such failure was fundamental error, necessitating the reversal of the prior proceedings and the remand for a new proceeding including the appointment of three commissioners. [Although it is not essential to its

decision, this ruling appears to be confused about and to reverse the general rule that presumes that a division in kind can and should be made (unless such division in kind would work a manifest injustice), with the sale approach being the least preferred procedure.]

3. PROBATE CLAIMS PURSUIT

(Non-Fiduciary Can Pursue Claims of the Estate, Under Certain Circumstances)

IN THE MATTER OF THE ESTATE OF BLEEKER, 2007 OK 68, 168 P.3d 774 (decided 09/18/2007; mandate issued __/__/200__): The trial court denied a former Administrix's request to be empowered to pursue a claim of the estate against the other 3 beneficiaries, where she was the 4th beneficiary, and she claimed the others stole $200,000.00 in cash from the estate, but the successor fiduciary (a bank) was refusing to pursue such claim. She requested leave of court to pursue the claim after she was removed as Administrix, relying on her beneficiary status for standing. The trial court denied such request based on the absence of any statute or case law allowing such non-fiduciary beneficiary to pursue such claim on behalf of the estate. The intermediate court of civil appeals affirmed the trial court on essentially the same grounds. On cert. the Oklahoma Supreme Court vacated the appellate court's decision, and reversed the trial court's decision and remanded the matter to the trial court for a determination as to whether there were sufficient facts to warrant the non-fiduciary being allowed to pursue the claim. Such request could be granted only after the trial court heard evidence and determined (1) whether the successor bank fiduciary had sufficient facts supporting its denial of the pursuit of the claim as having too low of a probability of being collected to justify any such effort, and (2) whether the former Administrix was willing to pursue the collection of the claim using her own funds, rather than expending the estate's funds, and (3) whether such request from a non-fiduciary fit the new common law principal being hereby adopted from sister states allowing such collection efforts

by beneficiaries where the personal representative is guilty of fraud, collusion or refusal to act. This decision results in the adoption of the newly developed common law rule allowing non-fiduciaries to pursue claims.

4. ATTORNEY'S LIEN

(An Attorney's Lien Does Not Allow the Attorney to Sell the Client's Judgment)

***MEHIPOUR v. HOLLAND*,** 2007 OK 69, 177 P.3d 544 (decided 09/25/2007; mandate issued __/__/200__): Oklahoma law recognizes (a) a passive possessory or retaining lien in favor of an attorney to allow the retention of a client's papers, money or property, pending payment of the attorney's bill, and (b) a special or charging lien allowing the attorney to be entitled to recover his fee from any property or funds collected by his client where such judgment arose from the attorney's efforts. An attorney asserted an attorney's lien for about $17,000.00, where he secured a judgment for a client in the amount of about $67,000.00. The client was unsuccessful in collecting on the judgment. The trial court granted to the attorney the right to sell the client's judgment at sheriff's sale. At such sale, which was held without notice to the client, the attorney purchased the client's judgment (worth over $67,000.00) for $500.00. The attorney then sought to execute on the client's judgment against the debtor through a sheriff's sale of the debtor's real property. The same trial judge allowed such sale of the debtor's real property over the objections of the client, thereby forcing the client to be the high bidder at such sale (bidding and paying $60,000.00). The trial judge would have allowed the proceeds of such sale to be paid to the attorney, rather than holding such funds pending the outcome of the client's appeal of such proceedings, except for the Oklahoma Supreme Court's timely intervention. On cert. the trial court was found to be without jurisdiction to sell the client's judgment to anyone, and therefore such sale to the attorney was vacated, including the court of appeals affirmation of such decision.

The proceeds of sale of the judgment debtor's property ($60,000.00) were ordered released to the client. The trial court's order impressing the client's judgment with an attorney's lien for the $17,000.00 was sustained. [It is undisclosed in the opinion, but one would assume that the attorney was entitled to be paid his $17,000.00 from the $60,000.00 in sale proceeds. While one should be in favor of all attorneys being paid for their work, the attorney's conscious denial herein of any due process notice to his client during the sale of the client's judgment to the attorney, and the trial court's confirmation thereof, are shocking.]

5. **VENDEE'S LIEN**

(A Vendee's Lien Is Ahead of a Lender's Construction Mortgage Lien)

GONZALES v. CITIZENS SECURITY BANK AND TRUST COMPANY, 2008 OK CIV APP 3, 176 P.3d 1223 (decided 09/28/2007; mandate issued 01/11/2008): The trial court was required to resolve a dispute between a lender who made a construction loan to a builder, and the separate buyer of the land who made a prior down payment to the builder towards the purchase price, when the lender and buyer sought to foreclose their respective liens. The court considered the statutes (a) which grant a vendee "a special lien upon the property…for such part of the amount paid…":, 42 O.S. § 26, (b) which makes such special lien subordinate to an "encumbrancer in good faith", 42 O.S. § 28, (c) which gives a lender advancing the purchase price a priority ahead of all other liens against the purchaser, 42 O.S. § 16, and (d) which recognizes priority between liens based on the date of their creation, 16 O.S. § 15. The vendee filed notice of his lien after the lender filed its purchase money mortgage. The trial court and the appellate court found that the lender could not be determined to be senior to the vendee because the lender had actual knowledge of the prior down payment at the time it advanced the construction funds. The lender had demanded such down payment be made and had dictated the amount of it. The vendee's lien

therefore had the senior priority and would be satisfied from the foreclosure sale proceeds before any funds were applied to the lender's debt.

6. TITLE BY ACQUIESENCE

(Where A Party Cannot Prove Mutual Agreement or Continuous Maintenance, Temporary Injunction is Inappropriate)

EUBANKS v. ANDERSON, 2008 OK CIV APP 13, 178 P.3d 872 (decided 10/19/2007; mandate issued 02/07/2008): The trial court refused to issue a temporary injunction to a party seeking to prevent a neighbor from installing a fence on what was originally the true property line. The requesting party (a) failed to show there was a high likelihood of prevailing on the merits, (b) failed to show irreparable harm to the requesting party if the injunction was not granted, that could not be compensated with money, (c) failed to show that the denial would adversely affect third parties, and (d) failed to show that public policy favored the issuance of the injunction. The appellate court affirmed. The threshold issue was whether the requesting party (who owned the land on the north side of the old fence) was likely to prevail on the ultimate issue of ownership of a 4 foot strip which was on the requesting party's north side of a fence (pig wire and barbed wire) but which originally was owned by the owner on the south side of the fence. There were two theories advanced: (a) boundary by prescription and (b) boundary by practical location. As to boundary by prescription, there was no evidence of mutuality of recognition of the fence as the boundary, such as each party only using the land on their own side of the fence, and as to boundary by practical location, there was no evidence that the fence was built by both parties as a boundary fence. In fact, the neighbor to the south of the fence (who was building the new fence on the real fence line) mowed and maintained the strip immediately north of the fence, and the evidence was that the fence was built not as a boundary fence but to

keep horses from getting loose from the north owner's lands.

7. PARTITION ACTION

(Election to Take Must Be Filed Within 20 Days)

RODGERS v. TWEDT, 2008 OK CIV APP 11, __ P.3d __ (decided 11/06/2007; mandate issued 02/07/2008): The trial court denied a request to elect to take the land made by one of two owners of land. Initially one owner timely filed (within 20 days of the filing of the Commissioners' Report) an election to take the land at the Commissioners' valuation, while the second owner filed an exception to the commissioners' valuation (within 20 days of the filing of the Commissioners' Report) representing that he would provide an independent appraisal. Later, substantially after the initial 20 day period had elapsed, the second party filed a combined document withdrawing her initial objection to the Commissioners' Report valuation and announcing an intention (belatedly) to take the property at the Commissioners' valuation. The trial court denied the second owner's request to take the land at the Commissioners' valuation, and sold it to the first owner, who had made a timely election to take the land at the Commissioners' valuation. The second owner sought to convince the trial court that because her initial objection to the Commissioners' Report was timely filed (challenging the valuation), and because, by statute, the court had the discretion to extend the 20-day election deadline, it should allow her to elect to take the land at the Commissioners' `valuation. [While this matter was not discussed by the court, if there were two timely competing offers to take the land at the Commissioners' valuation figure, there would have been a stalemate and the land would have had to be sold at auction to the highest bidder.] The trial court concluded that the second party failed to timely elect to take, and that any discretion to extend the 20-day election expired by statute at the end of such initial 20-day period.

8. NONJUDICIAL MARKETABLE TITLE PROCEDURES ACT

(Act Applies to Erroneous Judgments as Well as Deeds)

STUMP v. CHEEK, 2007 OK 97, 179 P.3d 606 (decided 12/12/2007; mandate issued 12/12/2007): The trial court and the intermediate court of appeals held that the Nonjuducial Marketable Title Procedures Act (12 O.S. §s 1141.1 et seq) (the "Act") did not cover clouds on title caused by judgments where such judgments were erroneous. This was based on language in the Act which provided this definition (§ 1141.2(1)): *"'Apparent cloud' means an effect,* ***without a judgment of a court of competent jurisdiction,*** *which in the good faith opinion of requestor results in a condition of title to real property located in the State of Oklahoma that fails to meet the standard of 'marketable title"…"*. The trial court had granted the requestor/plaintiff a summary judgment quieting the disputed tract in the requestor's name, leaving the attorney's fee issue to be resolved. Such cloud was caused by a judgment acquired by the losing party in a separate case, not involving the requesting party as a named party, but affecting the requesting party's title. The trial court refused to grant to the requestor, as the prevailing party, his attorney's fees, costs and expenses. The trial court's determination that the Act was inapplicable if the cloud was caused by a judgment, was affirmed by the intermediate court of appeals and then reversed by the Oklahoma Supreme Court. The Oklahoma Supreme Court held that the Act does cover erroneous judgments that cause clouds, and that such questioned legislative language should be interpreted to mean that the requestor could make such demand for a curative document even where a court had not yet issued a judgment declaring his title to be superior. The case was remanded to the trial court for a determination of whether the requestor had properly followed the procedures of the Act in making his request. [In its analysis the Oklahoma Supreme Court relied strongly upon the definition of marketable title found in the Title

Examination Standards.]

9. DEED INTERPRETATION

(A Deed Will Not Be Interpreted as Creating a Life Estate Absent Clear Language)

MOSS v. MOSS, 2008 OK CIV APP 2, 175 P.3d 971 (decided 12/14/2007; mandate issued 01/11/2008): The trial court interpreted a deed from a daughter to her mother as being ambiguous but then concluded that the deed created a life estate in the grantor/daughter. The questionable language in the deed stated in the granting clause, following the legal description: *"This transfer is subject to the retention of the rights of survivorship by and for Judy Gayle Moss* [the daughter]*."* After the mother died, a dispute arose as to whether the subject deed created a life estate in the daughter or some other interest, or none. The court of appeals held that the three documents which the trial court relied upon – including two deeds and a probate decree—to determine that the deed was intended to create a life estate all assumed but that they could not independently create such an interest in the daughter. The appellate court agreed that the deed was "patently ambiguous", but held that since the three documents relied on for the trial court's decision were not useful in making such decision, the trial court was required to take further evidence to determine the intent of the daughter. The appellate court also noted that the deed's language (i.e., *"rights of survivorship")* was more suggestive of the creation of a joint tenancy with right of survivorship than a life estate.

10. DEFICIENCY JUDGMENT

(A Deficiency Judgment Requested After the 90-day Deadline and Granted, is Void)

FIRST UNITED BANK AND TRUST CO., PAULS VALLEY V. WILEY, 2008 OK CIV APP 39, __ P.3d __ (decided 12/19/2007; mandate issued 04/18/2008): The trial court initially granted a deficiency judgment after a sale of real property, over the objection of the defendant/debtor.

Such objection was not predicated on the untimeliness of the motion for a deficiency, but on other grounds. Such decision was not appealed. When the lender sought to enforce the deficiency judgment against additional real property of the debtor, the debtor for the first time raised the untimeliness argument. The trial court vacated the deficiency judgment because the passage of the 90-day statutory deadline to seek a deficiency was a jurisdictional impediment to seeking such deficiency judgment. The deficiency judgment was void, and, as such, could be attacked at any time. The appellate court discussed the history of anti-deficiency statutes and how our State's statute was taken directly from New York's. The discussion centered on whether the requirement to act within 90 days was a statute of limitation, which is waived if not raised, or whether it was an extinguishment of the right, which is not waiveable. The appellate court said that there are *"three components of a valid judgment – jurisdiction of the person, jurisdiction of the subject matter, and the power of the court to decide the particular matter and render the particular judgment at issue."* It stated: *"The Oklahoma Supreme Court has not decided whether Section 686 is a statute of limitation or a condition on the exercise of the right to seek a deficiency."* The court of appeals quoted from an earlier Oklahoma Supreme Court case which declared: *"We prefer to view the Section 686 bar as a condition upon the exercise of a right."* The court of appeals was willing to make a "first impression" decision and it finally concluded: *"This court holds that the time deadline in Section 686 constitutes a condition on the right to a deficiency. The failure to meet the condition of Section 686 effectively destroys the right to a deficiency adjudication and eliminates the jurisdiction of the court to consider a deficiency."* The trial court decision vacating the deficiency judgment was affirmed.

11. <u>ADVALOREM ASSESSMENT</u>

<u>(Subdivision Lots Values Cannot be Frozen but Must be Updated Annually)</u>

LIDDELL v. HEAVNER, 2008 OK 6, 180 P.3d 1191 (decided 01/29/2008; mandate issued __/__/____): The trial court granted and the intermediate court of appeals sustained a summary judgment in favor of a county assessor, and on certiorari the court of appeals opinion was vacated and the trial court judgment reversed. The current statute 68 O.S. § 281(1) violates the State Constitution by freezing subdivision lot values without allowing them to be revalued annually. The statute establishes the lot value by taking the acquisition price for the entire subdivision and dividing it by the number of lots. Then without recognizing the completion of any construction on the lot (which thereby changes its current use classification from agricultural to residential) the county assessor must leave the value of each lot at its fixed acquisition value, until a structure is completed and the lot is sold, leased or occupied by the developer for purposes other than as a show home. Such freezing of the lot's value is a violation of the requirement to revalue all lands as the first of each year. Article X, § (A)(2) of the Oklahoma Constitution. The implementation of such freezing statute causes the consistent undervaluation of subdivision lots. This statute is declared unconstitutional and void. The balance of the taxation statute predated such subdivision provisions and is severable and, consequently, will continue to be enforceable. Such decision will be deemed prospective in nature to avoid creating chaos as to prior valuations.

12. ADVALOREM ASSESSMENT

(Subdivision Lots Values Are Frozen by Statute Until a Structure is Built and it is Sold)

IN THE MATTER OF THE 2005 TAX ASSESSMENT OF REAL PROPERTY, 2008 OK 7, __ P.3d __ (decided 01/29/2008; mandate issued __/__/____): The current statutory procedure protects developers by computing the value of undeveloped lots at the developer's purchase price prorated among the lots. Such valuation remains at such level until two conditions occur: (1) a structure is built on a lot, and (2) the lot is either conveyed to a bona fide purchaser, leased or

occupied other than as a sales office. [68 O.S. Section 2817(l)] Once those conditions arise, the taxable value of the lots goes up as of the next January 1 to the new use classification, usually changing from agricultural to residential, which usually produces a higher tax. In this case, a builder bought 4 lots and, before any structures were built, the county assessor revalued the lots on the next assessment date, January 1. The builder objected to the reassessment. The county assessor, the County Board of Adjustment and the trial court all held that the reassessment was appropriate, claiming that the "freezing" statute was unconstitutional. The Oklahoma Supreme Court affirmed the trial court, directing the assessor to refund the extra payments made with interest thereon. However, the Supreme Court referred to the similar pending case decided on the same day which did hold that the subject statute was unconstitutional, with such decision not be applied to this case and instead to be enforced prospectively. See above: ***LIDDELL v. HEAVNER,*** 2008 OK 6

13. CONDEMNATION

(Trial Court Cannot Expand Lands Being Condemned)

STATE ex rel DEPT. OF TRANSPORTATION v. MEHTA, 2008 OK CIV APP 25, 180 P.3d 1214 (decided 02/11/2008; mandate issued 03/14/2008): The ODOT filed condemnation proceedings including two tracts of land and a billboard supposedly located on such land. The ODOT included two owners as defendants, one owning the land and the other owning the billboard. When the Commissioners issued their Report of valuation, the primary land owner objected and requested the court to direct the Commissioners to issue a corrected report providing separate values for each tract. The ODOT did not object to such Commissioners' report. However, the ODOT discovered that the billboard was located on a separate tract of land which was owned by the first land owner but that ODOT already held an easement on such

separate tract, and, therefore, did not need to condemn the billboard or such separate tract. The tracts were identified by the court as tracts A, B and C owned by the first owner (Mehta), and tract D being the billboard which was owned by the second defendant, Eller, and was located on tract C. The ODOT filed a motion for summary judgment attempting to have the court determine that tract D (i.e., the billboard owned by Eller) should be excluded from the proceeding because it was illegally located on lands already "owned", through an easement by the ODOT. Mehta objected to the Motion for Summary Judgment as being an unpermitted pleading in condemnation which is a special proceeding. Mehta filed its own Motion for Summary Judgment seeking to establish that it, Mehta owned tract C free from any claim by the ODOT. The trial court denied both Motions. The ODOT settled with Eller, and dismissed him. The trial court granted Mehta's request for new instructions to the Commissioners directing them to separately valuing the 4 tracts. Such request by the Mehta's was granted over the ODOT's objections, and a corrected report was issued. The ODOT filed exceptions to the second Commissioner's report, objecting to the provision of separate valuations for each tract saying such process violated the "unit" rule, which prohibited such separate valuations, and also objected to the inclusion of tracts C and D. The trial court denied the ODOT's objections. Both parties also filed requests for a jury trial for valuation.

The ODOT appealed the trial court's decision. The two issues decided by the court of appeals were: (1) was the trial court's order denying the ODOT's exceptions subject to immediate appeal, and, (2), if so, should such decision be reversed. The appellate court decided: (1) yes, the trial court's decision to expand the scope of the condemnation to include tracts C and D was subject to immediate appeal, and, yes, such decision to include those tracts was improper, and (2) no, the Commissioner's separate valuation of the 4 tracts was not subject to appeal until

after the jury trial was held as to valuation. The Appellate Court advised the Mehtas to file an inverse condemnation action, if the Mehtas felt the ODOT was actually taking property owned by the Mehtas, meaning tract C. The dissent said there was not an appealable order, because the dissenter read the right to appeal as being limited to either appealing the court's decision concerning the right to take or the amount of the jury award, but not both. So you must somehow choose in advance which you will appeal.

14. FEE SIMPLE DETERMINABLE

(A Fee Simple Determinable Subject to the Resulting Automatic Right of Reverter Leaves a Present Interest in the Grantor)

ROX PETROLEUM, L.L.C. v. NEW DOMINION, L.L.C., 2008 OK 13, **184 P.3d 502** (decided 02/12/2008; mandate issued __/__/2008): A term mineral deed was given in 1927 for 10 years and for so long thereafter as oil and gas is produced. Such terms conveyed a fee simple determinable, leaving a possibility of reverter in the grantor, which automatically returned the interest to the grantor upon the happening of the specified event. Later, in 1955, the grantor conveyed the surface to a third party, with this reservation: "Except all the oil, gas and other minerals, all that portion of such minerals now owned by grantors being reserved by them, with the right of ingress and egress for mining and producing the same…" The question arose as to whether such 1955 conveyance transferred the grantor's possibility of reverter. The trial court and intermediate court of appeals said yes. The Oklahoma Supreme Court said no, vacating the court of appeals decision and reversing the trial court, remanding the case for further action consistent with this decision. The Oklahoma Supreme Court's discussion focused on the rule that in the absence of clear language creating a reservation, which must be found only by looking in the 4 corners of the document, the presumption is that all of the grantor's interest is conveyed.

[16 O.S. § 29] In this instance, the Oklahoma Supreme Court found the language of the 1955 deed to clearly express an intent to reserve to the grantor all of the grantor's interest in the oil, gas and other minerals; but more importantly, the court found that the possibility of reverter was an interest presently held by the grantor, which meant such interest was excepted from the grant in the 1955 deed, leaving it in the grantor.

15. CONDEMNATION

(Blight Determination Does Not Require Personal Notice to Land Owner)

CITY OF MIDWEST CITY v. HOUSE OF REALTY, INC., 2008 OK 28, __ P.3d __ (UNPUBLISHED: decided 02/12/2008; mandate issued __/__/2008): This is the third in a series of appeals relating to a dispute between the City of Midwest City (condemnor) and the House of Realty (landowner) relating to the City's attempts to condemn the land for economic development. The first case, Realty I, 2004 OK 56, resulted in an appellate decision holding that the City could not condemn land for economic development purposes and to remove blighted real property. The second case, Realty II, 2004 OK 97, resulted in a holding, inter alia, that the question of whether the City could use a general power of eminent domain combined with the Local Development Act was rendered moot by the City's abandonment of its attempts to condemn the property. This third appeal, Realty III, concerns primarily whether the City's procedure to declare a landowner's real property to be blighted must include personal notice of the setting of public meetings to consider the City's intent to declare such land as being blighted. The trial court's decision in favor of the City was affirmed by this Oklahoma Supreme Court. This appellate court stated: *"we hold that the City complied with due process requirements in providing publication notice of meetings at which blight determinations were made….[because (a)] blight determinations are legislative rather than adjudicatory proceedings…[and (b)] due*

process protections do not apply in legislative proceedings…[and (c,) further, due to] the lack of any requirement in either the Local Development Act or the Urban Renewal Act for personal notice of blight proceedings; and the landowner's opportunity to enjoy the full range of due process protections in the condemnation proceedings." Justices Opala and Kauger dissented asserting the need for personal notice of such a governmental action which will result in the forced sale of the real property.

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 <u>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.</u> 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 in the status of Standards in other States.

C. NEWEST CHANGES TO TITLE STANDARDS

The revised Standards and new Standards, discussed below, are considered and approved by the Standards Committee during the January-September period. The proposed changes and additions are then published in the Oklahoma Bar Journal in October, and are then considered and approved by the Section at its annual meeting in November. They are 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 is thereafter published in the Oklahoma Bar Journal. It is expected that the new "TES Handbook", containing the updated versions of these Standards, will be printed and mailed to all Section members by sometime in January.

The following sections display and discuss the Proposals which have been submitted to and approved by the Section and the House of Delegates. 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. 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.

1. 2007 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2007, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 9, 2007. Additions are underlined, deletions are by strikeout.

The Title Examination Standards Committee of the Real Property Law Section proposed 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 8, 2007.

These Proposals were approved by the Section and were presented to and approved by the House of Delegates at the OBA Annual Meeting on Friday, November 9, 2007. Proposals adopted by the House of Delegates become effective immediately.

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

[NOTE THAT THE FIRST TWO PROPOSALS ARE FOR TOTALLY NEW STANDARDS AND THE THIRD ONE IS FOR A REVISION]

Proposal 1.
The committee recommends adding a new Standard 24.13 to clarify to examiners what parties have standing to bring a mortgage foreclosure action.

Standard 24.13. Standing of Nominee or Agent:

An agent or nominee has standing to bring a cause of action to foreclose the lien of a mortgage, if the agent or nominee remains the record holder of the mortgage lien.

Comment: An examiner's opinion of the adequacy of such foreclosure proceedings shall be formed in the same manner as in a review of any other foreclosure action.

Authority: 12 O.S.§ 2017A; *Mortgage Electronic Registration Systems, Inc. v. Azize*, Case No. 2D05-4544 (Fla. App. 2/21/2007) (Fla. App., 2007); *Greer v. O'Dell*, 305 F.3rd 1297 (11th Cir. 2002).

Proposal 2.

The committee recommends adding a new Standard 29.2.1. to give examiners guidance on when a Certificate Tax Deed or Resale Tax Deed may be relied upon without further requirement.

Standard 29.2.1. Reliance on Certificate Tax Deed or Resale Tax Deed:

A title examiner may rely, without further requirement, on a certificate tax deed or resale tax deed as a conveyance of the real property described in such deed, provided:
A. title to such real property is, or has been, held of record by a purchaser for value who acquired such title from or through the grantee in such tax deed; and,
B. such certificate tax deed or resale tax deed has been of record in the county in which the land is situated for a period of not less than ten years.

Authority: 16 O.S. § 62 (d)

Caveat: The title acquired via a certificate tax deed or resale tax deed may be subject to the interest of any person in possession of the land claiming title adversely to the title acquired through such deed. 16 O.S. § 62(d). Also see the following unpublished case: Johnson v. August, 2005 OK CIV APP 97.

Proposal 3.

The committee recommends amending Standard 35.2 to reflect the change in the title of the applicable legislation and to update the citations of authority for this standard.

Standard 35.2 [Soldiers and Sailors] <u>Servicemembers</u> Civil Relief Act

The [Soldiers and Sailors' Civil Relief Act of 1940] <u>Servicemembers' Civil Relief Act</u>, 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 proceeding 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 title.

Authority: Hynds v. City of Ada *ex rel.* Mitchell, 195 Okla. 465, 158 P.2d 907 (1945), <u>1945 OK 167</u>; Wells v. McArthur, 77 Okla. 279, 188 P.322 (1920), <u>1920 OK 96</u>; State *ex rel* Commissioners of the Land Office v. Warden, 197 Okla. 97, 168 P.2d 1010 (1946), <u>1946 OK 155</u>; Snapp v. Scott, 196 Okla. 658, 167 P.2d 870 (1946), <u>1946 OK 114</u>.

2. 2008 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2008, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 21, 2008. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards 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 20, 2008.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 21, 2008. 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 amending the present Title Standard 15.2 to clarify in what circumstances a memorandum of trust is required to be filed of record.

§15.2. TITLE TO PROPERTY HELD UNDER AN EXPRESS PRIVATE TRUST.

A. Any estate in real property may be acquired and held in the name of an express private trust which is a legal entity. Where real property is so acquired, any conveyance, assignment, or other transfer of such property shall be made in the name of such trust by the trustee or trustees of said trust.

B. Where real property is transferred or acquired in the name of an express private trust after November 1, 1989, the trustee or trustees shall file a memorandum of trust, containing the date of creation of the trust, and the name of the trustee or trustees of the trust, in the office of the county clerk of the county where the real property is located. Where real property is transferred to or acquired in the name of a trustee or trustees as trustee(s) of a named express private trust, no memorandum of trust is required

C. When the deed of conveyance from the express private trust contains all information statutorily required to be contained in a memorandum of trust, the examiner may deem the deed to have satisfied the need for such memorandum of trust.

Authority: 60 O.S.A. §§ 175.6a, 175.7, 175.17, 175.24 & 175.45.

Comment: The Legislature, in its 1988 Session, adopted 60 O.S.A. § 171(B), which was intended to simply the problem addressed by the former Standard. The Legislature, in its 1989 Session, adopted new law codified as 60 O.S.A. §§ 175.6(a) and 175.6(b) and amended 60 O.S.A. § 171 by deleting paragraph (B) therefrom.

Comment: A conveyance to "The Smith Family Trust" as grantee is a conveyance to the trust itself, and would require compliance with 60 O.S.A. §175.6a. However, a conveyance to "Taylor Smith, Trustee of the Smith Family Trust" as grantee is a conveyance to the trustee on behalf of and as fiduciary for the trust and does not require the filing of a memorandum of trust as described in 60 O.S.A. §175.6a.

Proposal 2.

The committee recommends the adding a new Title Standard 17.4 in response to the enactment of 58 O.S.A. § 1251, et seq. Transfer-on-Death Deeds.

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, 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.

Proposal 3

The committee recommends amending Title Standard 25.5 to reflect the repeal of the Oklahoma Estate Tax as of January 1, 2010.

25.5 Oklahoma Estate Tax Lien

A. SCOPE.

For decedents who die on or before December 31, 2009, the Oklahoma estate tax lien attaches to all of the property which is part of the gross estate of the decedent, as defined under Article 8 of the Oklahoma Tax Code, immediately upon the death of the decedent, with the exception of property which falls under one or more of the following categories:

1. Property used for the payment of charges against the estate and expenses of administration, allowed by the court having jurisdiction thereof; or

2. Property reported to the Oklahoma Tax Commission by the responsible party or parties which shall have passed to a bona fide purchaser for value, in which case such tax lien shall attach to the consideration received from such purchaser by the heirs, legatees, devisees, distributees, donees, or transferees; or

3. Property passing to a surviving spouse, either through the estate of the decedent, by joint tenancy or otherwise.

Authority: 68 O.S. § 811.

Comment: The title examiner should be provided with sufficient written evidence to be satisfied that the particular real property falls under one or more of the exceptions as listed above. Otherwise, the title examiner should assume that all real property which is part of the gross estate of the decedent is subject to the lien of the Oklahoma estate tax.

B. DURATION.

The Oklahoma estate tax lien continues as a lien on all of the property in the decedent's gross estate, except for the categories of property as described in "A" above, for ten (10) years from the death of the decedent, unless an Order releasing taxable estate or an Order exempting the estate from estate tax is obtained from the Oklahoma Tax Commission as to the property in question.

Subsequent to the lapse of ten (10) years after the death of any decedent, title acquired through such decedent shall be considered marketable as to Oklahoma inheritance, estate or transfer tax liability unless prior thereto a tax warrant filed by the Oklahoma Tax Commission appears of record. If the Oklahoma Tax Commission causes a tax warrant to be filed of record within said ten (10) year period, then a release of that tax warrant must be obtained and filed of record.

C. REPEALER.

There will be no Oklahoma estate tax lien on the estate of a decedent with a date of death on or after January 1, 2010.

D. LATEST TES COMMITTEE AGENDA

2009 AGENDA

(As of January 5, 2009)

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

Sub-Comm.	Std.	Status	Description

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

_____*JAN 17/TULSA*_____

Epperson	Leg	Jan Report	LEGISLATIVE UPDATE ***Any proposed or recently enacted legislation, or rule, will be discussed.***
(Astle?)	NEW	Jan Report	LEGAL DESCRIPTIONS *Surveyors are starting to use alternative grid reference systems which produce different metes and bounds descriptions. Do we need a Standard dealing with legal descriptions in general and those new ones relating to the "plane coordinate system"? (Surveyor Danny Cahill is assisting)*
(Doyle?)	NEW	Jan Report	LLC'S SIGNING BY "MANAGING MEMBER" *Do we need a new or revised standard to recognize signatures from "managing member"?*
McEachin	NEW	Jan Report (Mar Report)	MRTA *Does the decision in the recent Rocket case impact the assumption that the MRTA is "self-executing" and whether the MRTA is applicable to severed minerals? Also see the earlier Anderson case and Bennett cases.* *Also, does the stray deed language of the MRTA, as it was recently amended, destroy the use of the MRTA by making "root of title" documents unreliable, if they fail to come from the correct prior root of title?*

Epperson	NEW	**Jan Report**	ABSTRACTING-IN GENERAL *The Emergency and anticipated Permanent Rules of the Oklahoma Abstractor's Board define what constitutes an Abstract of Title, including specifying what documents from certain offices are to be included in the abstract. Such Emergency Rules conflict with existing Title Examination Standards, including Federal Court and Bankruptcy Court pleadings, and the acceptability of a 30-Year MRTA Abstract. The Permanent Rules are expected to be completed in early 2009. See: Rule 5:10-5-3 of the OAB Rules, at www.eppersonlaw.com.*

Epperson	30.13	**Jan Report**	ABSTRACTING-30 YEAR ABSTRACT *Due to Regulations and specific rulings 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 analyzed.*

Epperson	NEW	**Jan Report**	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?*

(Astle?)	17.4	Jan Report	"TRANSFER ON DEATH" DEED *Do we need to revise the new standard to address unresolved issues?*

(Rheinberger ?)	30.10	Jan Report	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") . If so or if not, should this standard have a comment added, explaining that?

(Doyle?)	14.1	Jan Report	LLC'S MAY OWN PROPERTY *Can a "series" LLC own title to real property, under 18 Section 2054.4?*

(?)	NEW	Jan Report	LOT SPLIT Does the absence of lot split approval on deeds in communities outside the three circumstances set forth in existing standards constitute a cloud on title, such as in Moore or Midwest City?

(?)	NEW	Jan Report	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 Section 5001?*

(?)	7.2	Jan Report	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? Also, does a non-title holding spouse need to join where the conveyance of the homestead is to both spouses?*

(?)	NEW	Jan Report	FORECLOSURE IN CS *Is title valid if acquired through a court proceeding using a "CS" rather than a "CJ" designation?*

(?)	NEW	Jan Report	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?*

(?)	NEW	Jan Report	VALID PROCEEDING WITHOUT "UNKNOWN" SPOUSE *Is title to possible homestead valid if acquired through a court proceeding where it fails to include "defendant's spouse, if any"?*

(?)	NEW	Jan Report	DEAD PERSON IN PETITION *Is title valid if acquired using publication notice (to defendant, if living or if dead his heirs, successor and assigns) relying upon an affidavit asserting plaintiff does not know whether defendant is dead or alive, but the Petition style only lists the defendant alone?*

(?)	NEW	Jan Report	EVIDENCE OF ACCESS RIGHTS *What evidence of title does an examiner need to review before being comfortable opining that the owner holds a right of access, through an adjacent street or section line, or over a third parties' land?*

(?)	NEW	Jan Report	SURFACE ONLY ABSTRACT *Considering the surface rights that accompany all mineral leases, can there be a "surface only" abstract and opinion, and what standard abstract language should be required?*

(?)	NEW	Jan Report	JUDGMENT DEBTORS IN ABSTRACT *Is an abstract certificate adequate when it fails to list all names checked for judgments and, instead, asserts it covers "all fee owners"?*

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APPENDICES

1. SCHEDULE OF TES COMMITTEE MEETINGS FOR THE CURRENT YEAR

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

3. NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER REPORT

4. LIST OF PUBLISHED ARTICLES (AVAILABLE ON-LINE), BY KRAETTLI Q. EPPERSON

5. LATEST LEGISLATIVE REPORT

APPENDIX 1

SCHEDULE OF TES COMMITTEE MEETINGS FOR THE CURRENT YEAR

OBA REAL PROPERTY LAW SECTION
TITLE EXAMINATION STANDARDS COMMITTEE

2009 TES Committee Meeting Schedule
(Third Saturday: January through September)

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

APPENDIX 2

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

2008 Title Examination Standards Committee

Kraettli Q. Epperson, Oklahoma City, *Chair*
Janet Sharp, Norman, *Secretary*

Dale L. Astle, Tulsa
Rickey Avery, Oklahoma City
Rusty Brown, Tulsa
Barbara L. Carson, Tulsa
William Doyle, Tulsa
Alan C. Durbin, Oklahoma City
Alex Haley, Idabel
Martha M. Hardwick, Tulsa
Scott McEachin, Tulsa
A. Daniel Ogunbase, Oklahoma City
D. Faith Orlowski, Tulsa
Nils Rauniker, Wilburton
Henry P. Rheinburger, Oklahoma City
Janet Sharp, Oklahoma City
Keith Stitt, Tulsa
Scott Sullivan, Oklahoma City
John B. Wimbish, Tulsa

APPENDIX 3

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER

(Effective July 31, 2008)

STATUS REPORT

State		Last Revised Standards				
		Pre-2003	2003+	#Ch.	#Stands.	#Pgs.
1.	Arkansas	12-20-00	-	22	110	65
2.	Colorado	-	05-17-08	15	134	71
3.	Connecticut	-	12-31-04	28	140	440
4.	Florida	-	08-00-06	21	142	185
5.	Georgia	-	08-00-05	39	194	144
6.	Idaho[1]	c. 1946	-	-	-	-
7.	Illinois	01-00-77	-	14	26	35
8.	Iowa	-	06-00-08	16	104	85
9.	Kansas	-	00-00-05	23	71	122
10.	Louisiana	00-00-01	-	25	233	99
11.	Maine	-	02-13-07	09	71	88
12.	Massachusetts	-	05-05-08	N/A	74	103
13.	Michigan	-	05-00-07	29	430	484
14.	Minnesota	-	06-23-06	N/A	96	84
15.	Mississippi[1]	10-00-40	-	-	-	-
16.	Missouri	05-15-80	-	N/A	26	17
17.	Montana	c. 1955	-	N/A	76	78
18.	Nebraska	-	11-3-06	16	96	99
19.	New Hampshire	-	07-15-07	13	179	36
20.	New Mexico	00-00-50	-	06	23	05
21.	New York	01-30-76	-	N/A	68	16
22.	North Dakota	-	00-00-07	18	191	231
23.	Ohio	-	11-07-03	N/A	53	44
24.	Oklahoma	-	11-09-07	33	120	110
25.	Rhode Island	-	12-00-06	14	72	72
26.	South Dakota	-	06-21-03	N/A	66	58
27.	Texas	-	06-27-08	16	89	94
28.	Utah	06-18-64	-	N/A	59	13
29.	Vermont	-	04-04-03	28	38	31
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**			

[1]The Title Standards for this state are not available due to the fact that the standards are too old to find in print.

Prepared by Kraettli Q. Epperson, Attorney-at-Law, OKC, OK
(405) 848-9100; kqe@meehoge.com

APPENDIX 4

LIST OF PUBLISHED ARTICLES (ON-LINE), AUTHORED BY KRAETTLI Q. EPPERSON

KRAETTLI Q. EPPERSON:
PROFESSIONAL LECTURES & PUBLICATIONS: SELECTED LIST
ORGANIZED BY TOPIC
(Last Revised February 9, 2009)

ABSTRACTING

160. "Contract Provisions, Abstracting, & Title Examination in Oklahoma", Title Examination in Oklahoma, Lorman Education Services, Oklahoma City, Oklahoma (December 3, 2003)

104. "**An Attack by the State Auditor on the '30-Year Abstract'**", 68 Oklahoma Bar Journal 517 (February 22, 1997)

6. "**Abstract Certificate Officially Changed**," 54 Oklahoma Bar Journal 1713 (June 1983)

CORPORATE EXECUTION

68. "**Corporate Attest, Seal Still Needed For Real Estate Documents**", 84 Oklahoma Banker 17 (February 4, 1994)

FUTURE OF REAL PROPERTY

176. "A Status Report: On-Line Images of Land Documents in Tulsa and Oklahoma Counties and Beyond", The Oklahoma Bar Association Real Property Law Section Title Examination Standards Committee: Richard Cleverdon Roundtable Seminar, Tulsa, Oklahoma (June 24, 2005), Oklahoma City, Oklahoma (June 30, 2005)

164. "A Status Report: On-Line Images of Land Documents in Oklahoma County", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (June 11, 2004)

159. "A Look at Selected Future Changes Likely to Affect the Oklahoma Real Estate Attorney", Emerging Topics in Real Estate Law, OBA Real Property Law Section, Oklahoma City, Oklahoma (November 6, 2003) and Tulsa, Oklahoma (November 7, 2003)

132. "The Changing Face of Real Property With an Emphasis on Title Examination, and Title Assurance", Southern Nazarene University, Bethany, Oklahoma (February 17, 2000)

129. "Technology In Today's Real Estate Practice", Commercial Real Estate Seminar, OBA Real Property Section, Oklahoma City, Oklahoma (December 15, 1999) and Tulsa, Oklahoma (December 16, 1999)

HOMESTEAD ISSUES

162. "**Real Estate Homesteads in Oklahoma: Conveying and Encumbering Such Interest**", 75 The Oklahoma Bar Journal 1357 (May 15, 2004)

HOMEOWNERS ASSOCIATIONS & CONDOMINIUMS

208. "Responsible Dog Ownership in Oklahoma City (Loose, Barking and Pooping Dogs)", The Quail Creek Home Owners Association Monthly Newsletter, Oklahoma City, Oklahoma (October 12, 2008)

184. "Amending the Governing Documents for Condominiums and Homeowners' Associations", Lorman Education Systems, Special Issues for Condominiums and Homeowners' Associations in Oklahoma, Oklahoma City, Oklahoma (February 24, 2006)

17. "Pets, Parking and Pools: Association Rules and Regulations," Representing Homeowners Associations: Condominiums, Townhomes and Other PUDs, Oklahoma City University Law School, Oklahoma City, Oklahoma (September 9, 1986)

LEASES

95. "Residential Leases—The Landlord's Perspective", Oklahoma Bar Association, Tulsa, Oklahoma (February 23, 1996) and Oklahoma City, Oklahoma (March 1, 1996)

8. "Landlord's Lien," Landlord-Tenant Remedies (also Program Chairman), Oklahoma Bar Association, Tulsa, Oklahoma (March 16, 1984), Oklahoma City, Oklahoma (March 25, 1984)

LIENS: FIXTURES, JUDGMENTS, MATERIALMEN, MORTGAGES

106. "**Have Judgment Lien Creditors Become 'Bona Fide Purchasers'?**", 68 Oklahoma Bar Journal 1071 (March 29, 1997)

100. "**Mortgage Lenders Must Now Secure Two Judgments to Enforce Their Real Estate Mortgage**", 87 Oklahoma Banker 11 (January 3, 1997)

67. "A Brief Analysis of USA v. Ward, 985 F.2d 500 (10th Cir. 1993): The Federal Loan Programs' Inextinguishable Mortgage Lien", Presented to the Oklahoma City Commercial and Banking Lawyers Group, Oklahoma City, Oklahoma (January 20, 1994)

64. "**Federal Money Judgment Liens Under the Federal Debt Collection Procedure Act: A 40-Year Super-Lien**", 64 Oklahoma Bar Journal 3195 (October 23, 1993)

58. "**Local Real Property Recordings Required For Federal Money Judgments**," 63 Oklahoma Bar Journal 2697 (September 30, 1992)

52. "**One Step Beyond: Judicial Creation of a Judgment Lien in Divorce Decrees**," 62 Oklahoma Bar Journal 2631 (September 14, 1991)

32. "**Judgment Lien Creation Now Requires a Judgment Affidavit**," 59 Oklahoma Bar Journal 3643 (December 1988)

13. "Mechanics' and Materialmen's Lien: An Overview With A Discussion Of Selected Problems," Real Estate Titles And Conveyancing, Oklahoma City University Law School, Oklahoma City, Oklahoma (January 18, 1985); and Oklahoma City Title Attorney's Association, Oklahoma City, Oklahoma (February 8, 1985)

9. "**UCC Fixtures Filings Require An Acknowledgment**," 55 Oklahoma Bar Journal 695 (March 1984)

OIL & GAS ISSUES

194. "Marketable Title: What is it? And Why Should Mineral Title Examiners Care?", The 2007 Rock Mountain Mineral Law Foundation Institute, Westminster, Colorado (September 13, 2007)

3. "**Lenders Mineral Title Insurance: A Mini-Primer**," 53 Oklahoma Bar Journal 3089 (December 1982)

REAL PROPERTY LITIGATION

202. "Partition of Co-Tenancy Property", All About Forms: A Real Property Litigation Review, The Oklahoma Bar Association, Tulsa, Oklahoma (June 5, 2008), Oklahoma City, Oklahoma (June 6, 2008)

RESIDENTIAL PROPERTY CONDITION DISCLOSURE

148. "Oklahoma Residential Property Condition Disclosure Act: An Overview", Churchill-Brown Realtors Training Meeting, Oklahoma City, Oklahoma (June 18, 2002)

TAX SALES

92. "Tax Resales: Invisible and Invincible Liens that may be Surviving the Sale -- A Forum for Input for Possible Solutions", Oklahoma City Title Attorney's Association, Oklahoma City, Oklahoma (October 13, 1995)

82. "**Statute, Practices on Tax Sale Notices Raise Concerns**", 85 Oklahoma Banker 9 (June 9, 1995)

TITLE EXAMINATION: SELECTED ISSUES

175. "Selected Title Examination Issues", Examining and Resolving Title Issues in Oklahoma, National Business Institute, Oklahoma City, Oklahoma (June 7, 2005)

87. "**Title Examination Standards: A Second Status Report**", ABA Land Transactions Group (C-Committees) Newsletter, Number 5, July 1995

86. "**Title Examination Standards: Suggestions on Adopting and Maintaining Standards**", ABA Land Transactions Group (C-Committees) Newsletter, Number 5, July 1995

78. "The History and Direction of Title Examination Standards in America", Presented at: The Arkansas Bar Association 1995 Real Estate Seminar, Hot Springs, Arkansas (March 31-April 1, 1995)

46. "**Title Examination Standards in America: A Status Report**," 16 Probate and Property Magazine, ABA Real Property, Probate and Trust Magazine, Sept./Oct. 1990

1. "**The Title Standards Committee: A Status Report**," 53 Oklahoma Bar Journal 1827 (July 1982)

OKLAHOMA TITLE AUTHORITY: UPDATES

211. "Update on Oklahoma Title Related Cases: For 2007-2008", The Oklahoma Bar Association Real Property Law Section Annual Meeting, Oklahoma City, Oklahoma (November 20, 2008)

205. "Authority for and use of Title Examination Standards: Statutes, Cases, Oklahoma Abstractor's Board Regulations, & Title Examination Standards: Revisions for 2006-2007", Solo and Small firm Seminar, Oklahoma Bar Association, Lake Texoma Lodge, Oklahoma (June 20, 2008)

195. "Update on Oklahoma Title Related Cases: FOR 2006-2007, The Oklahoma Bar Association Real Property Law Section Annual Meeting, Oklahoma City, Oklahoma (November 8, 2007)

188. "Update on Oklahoma Title Authority: Statutes, Cases, Attorney General Opinions, & Title Examination Standards: Revisions for 2006", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 12, 2007)

TITLE EXAMINATION STANDARDS: UPDATES

200. "Update on Oklahoma Title Examination Standards (adopted November 2007) & Current Hot Title Topics", The Oklahoma Land Title Association Annual Meeting, Tulsa, Oklahoma (April 3, 2008)

182. "Update on Oklahoma Title Examination Standards: Revisions for 2006 (adopted November 4, 2005)", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 13, 2006)

172. "Update on Oklahoma Title Examination Standards: Revisions for 2005 (adopted November 12, 2004)", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 10, 2005)

161. "Update on Oklahoma Title Examination Standards: Revisions for 2004 (adopted November 14, 2003)", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (February 13, 2004)

152. "Update on Oklahoma Title Examination Standards: Revisions for 2003 (adopted November 22, 2002)", The Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 10, 2003)

144. "Update on Oklahoma Title Examination Standards: Revisions for 2002 (adopted November 16, 2001)", Oklahoma City Real Property Lawyers Association, Oklahoma City, Oklahoma (January 11, 2002)

137. "Update on Oklahoma Title Examination Standards: Revisions for 2001 (adopted November 17, 2000)", Oklahoma City Real Property Attorneys (Lawyers) Association, Oklahoma City, Oklahoma (January 12, 2001)

136. "Update on Oklahoma title Examination Standards: Revisions for 2000 (adopted November 12, 1999)", The Conference on Consumer Finance Law, Oklahoma City, Oklahoma (November 2, 2000)

TITLE INSURANCE: SELECTED ISSUES

183. "Favorite Title Examination Standards Relating to Title Insurance", Oklahoma Land Title Association Advanced Title Insurance Seminar, Oklahoma City, Oklahoma (February 8, 2006)

126. "An Overview of Selected Title Insurance Issues In Oklahoma", The Oklahoma Association of Professional Mortgage Women, Oklahoma City, Oklahoma (February 9, 1999)

123. "Avoiding Title Pitfalls" & "Title Insurance", Oklahoma Association of Realtors/Real Estate Seminar, Stillwater, Oklahoma (October 8, 1998)

TRUST ISSUES

115. "Can Bankers Trust Trusts? Or A Brisk Walk Thru 'Never-Never' Revocable Trust Land", Oklahoma City Commercial Law Attorney's Association, Oklahoma City, Oklahoma (April 21, 1998)

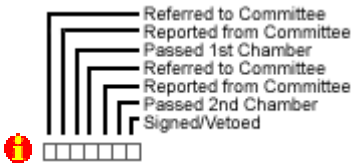
APPENDIX 5

LEGISLATIVE REPORT

THE JOURNAL RECORD
LEGISLATIVE REPORT

Oklahoma County Clerk's Office
Bill Status Report
02-05-2009 - 16:17:32

- Indicates action since request date.



Track: PREP

HB 1048 (3)	Banz	Relates to the collection of delinquent real property taxes; removes physically disabled from "incapacitated" persons granted additional time to redeem personal items; reduces time to collect excess sale proceeds by half.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading
HB 1291 (3)	Shoemake	Defines the information a seller must disclose about oil and gas on their property prior to selling it.
Track Name(s):		PREP
Bill History:		02-02-09 H First Reading
HB 1331 (3)	Ritze	Sets criteria for properties that can be assumed by the state under eminent domain.
Track Name(s):		PREP
Bill History:		02-02-09 H First Reading
HB 1389 (3)	Osborn	Allows prevailing party to be entitled to court costs, attorney fees, after final judement.
Track Name(s):		PREP
Bill History:		02-10-09 H Meeting set for 10:30 a.m., Room 432A, State Capitol ...House General Government
HB 1469 (3)	McDaniel, Randy	Creates the "Property Rights Advocate Act" that relates to the taking of personal property by government entitie and creates an Office and a Board that shall oversee that the Act is properly carried out.
Track Name(s):		PREP, Oklahoma County

	Bill History:	02-02-09 H First Reading

HB 1473 (3)	Sanders	Except ordinacnces pursuant to the title, land of 5 acres or more used for agricultural purposes annexed into the municipal limits at any time, shall be exempt from ordinance restricting land use and building construction.
	Track Name(s):	PREP
	Bill History:	02-02-09 H First Reading

HB 1507 (3)	Blackwell	Shell bill. Act shall be known as the "Okla. Landowner Bill of Rights Act of 2009".
	Track Name(s):	PREP
	Bill History:	02-02-09 H First Reading

HB 1613 (3)	Sullivan	Creates the Oklahoma Insurance Act of 2009.
	Track Name(s):	PREP
	Bill History:	02-02-09 H First Reading

HB 1615 (3)	Sullivan	Relating to sale of realty, 10 percent down payment shall be made by cash or cashiers check, business and personal checks shall be accepted with an official bank letter stating it is good.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-02-09 H First Reading

HB 1673 (3)	Dorman	Counties of the state are authorized to levy a tax upon the severanceof sand, rock and shale whithin the territorial limits of the county.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-02-09 H First Reading

HB 1819 (3)	Martin, Steve	Relating to insurance and regulations of transactions involving certain security and real estate and licensing requirements.
	Track Name(s):	PREP
	Bill History:	02-02-09 H First Reading

HB 2055 (3)	Thompson	Creates the Oil & Gas Owner's Sales Protection Act; defines terms. when security may be deemed perfected.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-02-09 H First Reading

HB 2259 (3)	Terrill	Establishes The Oklahoma Abstracting Act of 2009.

Track Name(s):	PREP
Bill History:	02-02-09 H First Reading

HJR1001 (3)	Dank	Sends to a vote of the people a property tax increase exception for persons aged 65 or older who own a homestead.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading

HJR1002 (3)	Dank	Sends to a vote of the people a provision allowing the county commissioners to call for an election to change the 5-percent limit on property tax increases to 2 percent.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading

HJR1016 (3)	Jackson	Sends to a vote of the people a measure clarifying language related to real property valuation.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading

HJR1024 (3)	Inman	Sends to a vote of the people a measure that would remove the income restriction for homeowners over 65, allowing all to receive the freeze of prop. values for property tax benefits.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading

HJR1025 (3)	Liebmann	Sends to a vote of the people a measure that would limit the taxable market value to a 3% increase per year.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading

HJR1026 (3)	Schwartz	Sends to a vote of the people a measure that would allow a veteran who is disabled the ability to claim an exemption for a manufactured home.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading

HJR1027 (3)	Rousselot	Ballot measure shell bill dealing with property taxes for those over 65 years of age.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading

HJR1029 (3)	Scott	Sends to a vote of the people a measure that would extend Ad Valorem tax credit eligibility to disabled Highway Patrol Troopers injured in the line of duty.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading
HJR1030 (3)	Morrissette	Sends to a vote of the people a measure that would change the income eligibility for tax credits for homeowners aged 65 or older.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading
HJR1044 (3)	Thompson	Sends to a vote of the people a measure that would cap fair market values realted to property taxes from 5% to 3%.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading
HJR1045 (3)	Nelson	Sends to a vote of the people a measure that would limit the increase in property values related to tax assessments to 3%, currently limited at 5%.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 H First Reading
SB 331 (3)	Burrage	Increases the maximum income for property tax relief eliegibility for those 65 yrs old, or older, from $12,000 to $22,000; modifies the amount of claim.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 S First Reading
SB 332 (3)	Burrage	Increases income eligibility for property tax credit from $20,000 to $22,000 per year.
Track Name(s):		PREP, Oklahoma County
Bill History:		02-02-09 S First Reading
SB 349 (3)	Myers	Relates to the filing of environmental permits; increases penalties for interfering with the remediation of a monitored site; EMERGENCY.
Track Name(s):		PREP
Bill History:		02-03-09 S Voted from committee - Do Pass Senate Judiciary
SB 523 (3)	Aldridge	Expands requirements for state property and requires all sales to undergo legislative directive. EMERGENCY.
Track Name(s):		PREP

	Bill History:	02-02-09 S First Reading
SB 558 (3)	Myers	Updates definitions relating to the Neighborhood Redevelopment Act; EMERGENCY.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-03-09 S Referred to Senate Committee Senate Judiciary
SB 565 (3)	Gumm	Modifies method of demanding a jury trial; prohibits interest rate charge against a party related to acquisition of land.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-03-09 S Referred to Senate Committee Senate Judiciary
SB 587 (3)	Brogdon	Disapproves the Urban Renewal Authority's exercise of power of eminent domain; modifies procedure for acquisition of real property by urban renewal authorities and redevelopment trusts; EMERGENCY.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-03-09 S Referred to Senate Committee Senate Judiciary
SB 601 (3)	Stanislawski	Relates to property tax, broadening applicability of limit to homestead exemption.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-03-09 S Referred to Senate Committee Senate Finance
SB 809 (2)	Aldridge	Establishes the Personally Identifiable Information Act; EMERGENCY.
	Track Name(s):	County Clerk, PREP, Oklahoma County
	Bill History:	02-02-09 S First Reading
SB 816 (3)	Stanislawski	Determines settlement of disputes pertaining to church property ownership.
	Track Name(s):	PREP
	Bill History:	02-02-09 S First Reading
SB 868 (3)	Branan	Extends dates and sets taxation limits for homesteads.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-02-09 S First Reading
SB 990 (2)	Laster	Requires all records of public bodies and public officials to be open to any person for inspection, copying, or mechanical production during regular business hours.
	Track Name(s):	County Clerk, PREP, Oklahoma County

	Bill History:	02-02-09 S First Reading
SB 1067 (3)	Marlatt	Relates to the recording and documentation of land and real estate property.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-02-09 S First Reading
SB 1144 (3)	Wilson	Modifies procedures for the issuance of certain policies by title insurers.
	Track Name(s):	PREP
	Bill History:	02-02-09 S First Reading
SJR 5 (3)	Reynolds, Jim	Refers to a vote of the people a Constitutional amendment limiting increases in fair cash value of properties to be tied to the Consumer Price Index.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-02-09 S First Reading
SJR 7 (3)	Leftwich	Refers to a vote of the people a Constitutional amendment limiting the increases in fair cash value of property to three percent in any taxable year.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-02-09 S First Reading
SJR 29 (3)	Adelson	Sends to a vote of the people a proposal to exempt from property tax qualified child care centers; requires Legislature to enact laws for reimbursement.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-02-09 S First Reading
SJR 36 (3)	Newberry	Sends to a vote of the people a change in the way the fair cash value of certain homesteads would be figured for property tax purposes.
	Track Name(s):	PREP, Oklahoma County
	Bill History:	02-02-09 S First Reading

- End of Report -