UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY: STATUTES, REGULATIONS, CASES, ATTORNEY GENERAL OPINIONS & TITLE EXAMINATION STANDARDS: REVISIONS FOR 2011-2012

(Covering July 1, 2011 to June 30, 2012)

BY:

KRAETTLI Q. EPPERSON, PLLC
MEE MEE HOGE & EPPERSON, PLLP
50 PENN PLACE
1900 N.W. EXPRESSWAY, SUITE 1400
OKLAHOMA CITY, OKLAHOMA 73118

PHONE: (405) 848-9100
FAX: (405) 848-9101

E-mail: kqe@meehoge.com
Webpages: www.meehoge.com
www.EppersonLaw.com

Presented For the:

OKLAHOMA BAR ASSOCIATION
REAL PROPERTY LAW SECTION
CLEVERDON ROUND TABLE SEMINAR PROGRAM

At
Tulsa, OK—May 10, 2013 &
OKC, OK—May 22, 2013

(C:\mydocuments\bar&papers\papers\263 TitleUpdate(11-12)(OBA Clev)

KRAETTLI Q. EPPERSON
ATTORNEY AT LAW

POSITION: Partner: Mee Mee Hoge & Epperson, PLLP
1900 N.W. Expressway, Suite 1400, Oklahoma City, OK 73118
Voice: (405) 848-9100; Fax: (405) 848-9101
E-mail: kqe@MeeHoge.com; website: www.EppersonLaw.com

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

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

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

MEMBERSHIPS/POSITIONS:

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

SPECIAL EXPERIENCE:

Court-appointed Receiver for 5 Abstract Companies in Oklahoma
Oklahoma City University School of Law adjunct professor: "Oklahoma Land Titles" course (1982 - Present);
Vernons 2d: Oklahoma Real Estate Forms and Practice, General Editor and Contributing Author (2000 – Present);
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 & AFLTICO/AGT/Old Republic (1979-1981);
Urban Planner: OCAP, DECA & ODOT (1974-1979).

SELECTED PUBLICATIONS:

"The Need for a Federal District Court Certificate in All Title Examinations: A Reconsideration", 83 OBJ 2367 (November 3, 2012); and
"The Real Estate Mortgage Follows the Promissory Note Automatically Without an Assignment: The Lesson of BAC Home Loans", 82 OBJ 2938 (December 10, 2011); and
"Oklahoma's Marketable Record Title Act: An Argument for its Application to Chains of Title to Severed Minerals after Rocket Oil and Gas Co. v. Donabar", 82 The Oklahoma Bar Journal 622 (March 12, 2011).

SPECIAL HONORS: Okla. Bar Assn. 1997 Maurice Merrill *Golden Quill Award*;
Okla. Bar Assn. 1990 Earl Sneed *Continuing Legal Education Award*;
Okla. Bar Assn. 1990 Golden Gavel Award: *Title Exam. Standards Committee.*

TABLE OF CONTENTS

AUTHOR'S RESUME

I. INTRODUCTION

II. STATUTORY CHANGES

III. REGULATORY CHANGES

IV. CASE LAW

V. ATTORNEY GENERAL OPINIONS

VI. TITLE EXAMINATION STANDARDS CHANGES

A. EXAMINING ATTORNEY'S RESPONSIBILITIES

B. NEED FOR STANDARDS

C. NEWEST CHANGES TO TITLE STANDARDS

2012 Report of the Title Examination Standards Committee of the Real Property Section

D. LATEST TES COMMITTEE AGENDA WITH SCHEDULE OF MEETINGS

APPENDICES

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

2. NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER REPORT

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

I. INTRODUCTION

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

The following materials reflect a listing of selected changes in the law of Oklahoma related to real property title issues, arising over the 12 months following June 30, 2011, including any (1) statutes enacted during the most recent State legislative session, (2) new regulations (if any), (3) cases from the Oklahoma Supreme Court and the Court of Civil Appeals, (4) opinions from the Oklahoma Attorney General (if any), and (5) Oklahoma Title Examination Standards adopted (or proposed) during that period.

II. STATUTORY CHANGES

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

(PREPARED BY JASON SOPER)

2010-2012 LEGISLATIVE TERM

2ND SESSION OF THE 53RD LEGISLATURE

PENDING BILLS AND LAWS THAT MAY EFFECT REAL PROPERTY & TITLE EXAMINATION STANDARDS

AMENDED & UPDATED FOR JUNE 16, 2012 MEETING

NEW LAWS ESTABLISHED IN THE 2012 SESSION

HB2257 Amending Okla. Stat. 60 § 175.3 to allow for a "Trustee Advisor"
Sponsor: Representative Sherrer

Status: Signed into Law on April 25, 2012

Measure amends existing statute to allow for a Trustee Advisor to assist the trustee with regard to all or some of the matters relating to the property of the trust. The Trust Advisor would be a person appointed by the terms of the trust instrument to act as an advisor to the trustee. Powers exercisable by the trustee remain vested in the trustee. The trustee is not required to follow the advice of the advisor and the advisor is not liable as or considered to be a trustee or a fiduciary.

HB2654 Establishing the Energy Litigation Reform Act under Okla. Stat. 52.
Sponsor: Representative Jordan

Status: Signed into Law on May 8, 2012

The measure provides rules of construction for certain oil and gas agreements and specifies terms that must apply to any action brought to recover proceeds and/or interest under the Production Revenue Standards Act. The measure also requires that parties bringing a civil action against a person in violation of the Production Revenue Standards Act give written notice of the alleged violation. With respect to class action suits, the purported class representative is required to present to the court prima facie evidence of the claimant's own right to the requested relief before any proceedings are maintained to certify a class. The court will exclude any member from the class that does not affirmatively request inclusion in the class.

HB2656 Amending Okla. Stat. 16 § 86.2 to redefine electronic signatures of conveyances
Sponsor: Representative Jordan & Senator Crain

Status: Signed into Law on April 13, 2012

Measure clarifies the definition of Electronic Signature for electronic recordings under the Uniform Real Property Electronic Recording Act to be a digital image or electronic copy of a signature affixed to an original or certified copy of an original paper document or instrument. It is acceptable, provided that the person submitting the digital image or electronic copy of the document or instrument complies with all other requirements, rules or regulations related to electronic recordings under the Act.

BILLS REQUIRING A VOTE OF THE PEOPLE TO BECOME LAW

HJR1002 Constitutional amendment modifying limitation on valuation increases
Sponsor: Representative Dank & Senator Reynolds

Status: Measure has been filed with the Secretary of State and will go to a vote of the people for consideration.

If passed, measure would (after a vote of the people), cap the yearly increase of the fair cash value of properties from 5% to 2%.

SJR52 Amending by vote of the people Section 6A-Article X of the Oklahoma Constitution to exclude intangible personal property from ad valorem tax or to any other tax in lieu of ad valorem tax in Oklahoma. This measure would exempt all intangible personal property from property tax. No person, family or business would pay a tax on intangible property. The change would apply to all tax years beginning on and after January 1, 2013.
Sponsor: Senator Mazzei

Status: Measure has been filed with the Secretary of State and will go to a vote of the people for consideration.

BILLS VETOED BY THE GOVERNOR

HB2535 Creating the Oklahoma Uniform Statutory Rule Against Perpetuities Act
Sponsor: Representative McCullough

Status: Sent to Governor for Consideration on May 25, 2012. Vetoed by Governor on June 8, 2012.

The measure provides a statutory rule against perpetuities and states that a nonvested property interest or general power of appointment is invalid unless it is certain to vest or terminate or be satisfied within 21 years after the death of an individual then alive or 500 years after its creation. A non-general power of appointment or general testamentary power of appointment is invalid unless it is irrevocably exercised or terminated within 21 years after the death of an individual then alive or 500 years after its creation. The measure lists exclusions from the statutory rule against perpetuities.

BILLS INTRODUCED IN THE 2012 SESSION THAT DID NOT MAKE IT OUT OF THE LEGISLATURE BUT ARE NOT DORMANT AS THEY COULD BE PASSED IN A SPECIAL SESSION

HB2991 The Modernization of Health Department Certificates Act.
Sponsor: Representative Ritze and Senator Treat

Status: Measure Passed House by a vote of 87-1 on March 8, 2012. Amended Measure passed Senate by a vote of 43-0 on April 16, 2012. House rejected the Senate's Amendments on April 24, 2012. Revised Measure passed House by a vote of 88-2 on May 25, 2012 and is awaiting consideration by Senate.

The measure requires the State Department of Health (OSDH) to administer a fee based portal system to process requests for birth and death certificates online.

SB1192 Amending Okla. Stat. 60 § 820.1 relating to severance of air space rights.
Sponsor: Senator Schulz

Status: Passed Senate by a vote of 40 – 0 on March 14, 2012. Amended Measure Passed House on April 10, 2012 by a vote of 92 – 0. Senate rejected the House's Amendments on May 1, 2012. Revised Measure passed Senate by a vote of 42-0 on May 16, 2012 and is awaiting consideration by House.

Measure would amend Okla. Stat. 60 § 820.1 adding additional language expressly allowing for the owner of the surface and mineral estates to continue leasing their interests and granting easement interests in and to the property under a wind energy lease.

SB1299 Amending Okla. Stat. 58 § 1252 regarding the Nontestamentary Transfer of Property Act (i.e., the Transfer on Death Deed)
Sponsor: Senator Crain and Representative Sherrer

Status: Passed Senate by vote of 44-0 on February 29, 2012. Amended Measure passed House by vote of 93 – 0 on April 3, 2012. Amended Measure is awaiting consideration by Senate.

Measure allows for the transfer on death deed, or the revocation thereof, to be executed by an attorney-in-fact or court appointed guardian. Measure also amends existing statute to simplify the transfer, revocation or disclaimer under a transfer on death deed.

* * * * * * *

ADDITIONAL ENACTED LEGISLATION, NOT LISTED ABOVE

(by Kraettli Q. Epperson)

HB1562 Landowners Bill of Rights Act
Sponsors: Representatives Jordan and Kay of the House, and Senators Treat, Marlatt, Shortey, and Brecheen of the Senate

Status: Signed into Law on April 30, 2012

The measure directs the Attorney General to "prepare a written statement that includes a 'Landowner's Bill of Rights' for a property owner whose real property may be acquired…through the use of…eminent domain authority…".

III. REGULATORY CHANGES

(NONE)

IV. CASE LAW

LIST OF CASES

NO.	TOPIC	CASE	OKLAHOMA CITATION	DECIDED	MANDATE
A. OKLAHOMA COURT OF CIVIL APPEALS					
1	Attorney Fees	Goss v. Mitchell	2011 OK CIV APP 74	03/30/11	07/18/11
2	Attorney Fees	Maxxum Construction, Inc. v. First Commercial Bank	2011 OK CIV APP 84	04/29/11	07/18/11
3	Interpret Deed	Combs v. Sherman	2011 OK CIV APP 102	08/29/11	09/28/11
4	Insuring Remainder	Sorrels v. Tech	2011 OK CIV APP 107	06/03/11	09/28/11
5	Mortgage Priority	Countrywide Home Loans, Inc. v. BancFirst	2011 OK CIV APP 111	04/22/11	10/19/11
6	Guarantor's Liability	Borges v. Waller	2011 OK CIV APP 127	09/23/11	12/29/11
7	Adverse Possession	Flagg v. Faudree	2012 OK CIV APP 4	11/22/11	01/13/12
8	Merger Of Notes	Bank of Kremlin v. Davis	2012 OK CIV APP 7	12/22/11	01/31/12
9	MM Lien Pre-Lien Notice	Northwest Roofing Supply, Inc. v. Elegance in Wood, LLC	2012 OK CIV APP 13	08/04/11	02/23/12
10	Proper Venue	Beverly Enterprises-Texas, Inc. v. Devine Convalescent Care Center	2012 OK CIV APP 16	01/26/12	03/01/12
11	Inverse Condemnation	Material Service Corporation v. Rogers County Board of Commissioners	2012 OK CIV APP 17	08/18/11	03/01/12
12	Condemnation	State ex rel. Department of Transportation v. Wolfe	2012 OK CIV APP 20	11/21/11	03/01/12
13	Legal Description	Barrett v. Humphrey	2012 OK CIV APP 28	02/14/12	04/05/12
14	Real Estate Commission	Ferguson Advisors, LLC v. Malherbe	2012 OK CIV APP 33	11/16/11	04/05/12
15	MM Lien Priority	F & M Bank & Trust Co. v. Gardner Construction Company	2012 OK CIV APP 38	01/06/12	04/13/12
16	Condemnation Valuation	State ex rel. Dept. of Transportation v. Sherrill	2012 OK CIV APP 43	02/03/12	05/07/12
17	Title By Acquiescence	McGlothlin v. Livingston	2012 OK CIV APP 48	11/09/11	05/11/12

18	MM Lien Priority	Mill Creek Lumber & Supply Co. v. First United Bank and Trust Co.	2012 OK CIV APP 53	03/27/12	05/21/12
19	Statute Of Repose	Bankers Trust Co. of California N.A. v. Wallis	2012 OK CIV APP 56	02/24/12	06/01/12
B. OKLAHOMA SUPREME COURT: CASES OTHER THAN FORECLOSURE "STANDING" CASES					
20	Trying Title In F.E.D.	Rogers v. Bailey	2011 OK 69	07/06/11	10/19/11
21	Tax Sale Notice	Valdez v. Occupants of 3908 SW 24th Street	2011 OK 99	11/22/11	03/01/12
C. OKLAHOMA SUPREME COURT: FORECLOSURE "STANDING" CASES					
22	Foreclosure Standing	Deutsche Bank National Trust v. Brumbaugh	2012 OK 3	01/17/12	02/23/12
23	Foreclosure Standing	Deutsche Bank National Trust Company v. Byrams	2012 OK 4	01/17/12	04/23/12
24	Foreclosure Standing	HSBC Bank USA v. Lyon	2012 OK 10	02/14/12	05/07/12
25	Foreclosure Standing	Deutsche Bank National Trust Company v. Matthews	2012 OK 14	02/28/12	04/05/12
26	Foreclosure Standing	Deutsche Bank National Trust Company v. Richardson	2012 OK 15	02/28/12	04/05/12
27	Foreclosure Standing	CPT Asset Backed Certificates, Series 2004-EC1 v. Kham	2012 OK 22	03/06/12	05/21/12
28	Foreclosure Standing	Bank of America, NA v. Kabba	2012 OK 23	03/06/12	05/11/12
29	Foreclosure Standing	J.P. Morgan Chase Bank N.A. v. Eldridge	2012 OK 24	03/06/12	04/09/12
30	Foreclosure Standing	BAC Home Loan Servicing, L.P. v. Swanson	2012 OK 25	04/03/12	04/27/12
31	Foreclosure Standing	NTEX Realty, LP v. Tacker	2012 OK 26	04/03/12	04/27/12
32	Foreclosure Standing	U.S. Bank v. Moore	2012 OK 32	04/10/12	06/07/12
33	Foreclosure Standing	U.S. Bank, N.A. v. Alexander	2012 OK 43	05/01/12	07/20/12
34	Foreclosure Standing	Residential Funding Real Estate Holdings, LLC v. Adams	2012 OK 49	05/29/12	06/22/12
35	Foreclosure Standing	Wells Fargo Bank, N.A. v. Heath	2012 OK 54	06/12/12	07/09/12
36	Foreclosure Standing	U.S. Bank National Association v. Baber	2012 OK 55	06/12/12	07/09/12

1. **GOSS v. MITCHELL (2011 OK CIV APP 74)**

TOPIC: **ATTORNEY FEES**

RULING: **Award of Attorney Fees is Justified When Enforcing or Defending Against Restrictions**

FACTS: A property owner sought and received injunctive relief against another property owner in the subdivision enforcing certain restrictions. After winning, the plaintiff sought attorney fees relying on the Nonjudicial Marketable Title Procedures Act (NMTPA) (12 O.S. §1141.5).

TRIAL COURT RULING: Granted attorney fees and costs, based on the UMTPA, in a certain amount.

COURT OF CIVIL APPEALS RULING: Affirmed award of costs as unopposed. Appellent Court agreed this was not a quiet title action as required to justify award of attorney fees under the NMTPA, but then affirmed an award of fees based on The Real Estate Development Act (60. O.S. §§851-857, especially 856). Revised and remanded amount of fees for trial court to determine amount according Burke elements.

2. **MAXXUM CONSTRUCTION, INC. v. FIRST COMMERCIAL BANK (2011 OK CIV APP 84)**

TOPIC: **ATTORNEY FEES**

RULING: **Award of Attorney Fees is Justified If Underlying Issue is "Labor or Services"**

FACTS: Builder was not paid for construction "labor and services," and sued both the landowner and the landowner's bank (sued bank based on being a guarantor and for unjust enrichment).

TRIAL COURT RULING: After winning the lawsuit, the bank was awarded costs and attorney fees under 12 O.S. §936, which awards costs and attorney fees when the matter involves a dispute over "labor or services."

COURT OF CIVIL APPEALS RULING: Affirmed award of costs and attorney fees because underlying issue was for "labor or services," although the argument was based on guarantor and unjust enrichment.

3. **COMBS v. SHERMAN (2011 OK CIV APP 102)**

TOPIC: **INTERPRET DEED**

RULING: **Separate Conveyances From Joint Owners Conveyed Only Their Prorated Share**

FACTS: Two sisters owned surface and minerals as joint tenants. Without a contract, but with a joint letter from the sisters, saying they would sell "for $175.00 per acre with one-quarter mineral rights going to the buyer," and "Reference to the mineral rights—Agnes and I [Ethel Sherman] will retain 3/4 of the minerals and sell 1/4 with the 56 acres." The separate deeds provided:

> "LESS AND EXCEPT an undivided 3/4ths interest in and to the oil, gas and other minerals lying in and under the property, which are specifically reserved by Grantor herein, it being the intent of Grantor herein to convey to Grantee herein, an undivided 1/4th mineral interest."

Buyer claimed he received 1/2 of the minerals, while the sellers said he received 1/4 of the minerals.

TRIAL COURT RULING: Trial court ruled for buyer giving him a 1/2 interest in the minerals.

COURT OF CIVIL APPEALS RULING: Reversed and remanded ruling the intent was clear

that the sisters sold 1/4 in the minerals and the buyer received 1/4 of the minerals, since you cannot keep 3/4 of the minerals, while giving 1/4, twice!

4. **SORRELS v. TECH (2011 OK CIV APP 107)**

TOPIC: **INSURING REMAINDER**

RULING: **Remainder Interest Owner Must Insure Own Interest**

FACTS: Plaintiff held remainder interest due to a trust and resulting trustees deed to defendant, wherein plaintiff was required—in the deed—to insure her remainder interest. Plaintiff failed to insure her remainder interest. Defendant insured her life estate interest. A tornado destroyed the house. Plaintiff sued defendant to recover all of the insurance proceeds paid to defendant, plus the shortfall between the value of the house and the amount of the insurance proceeds.

TRIAL COURT RULING: Ruled for defendant on Summary Judgment. Plaintiff had an insurable interest and was responsible to insure it.

COURT OF CIVIL APPEALS RULING: Affirmed.

5. **COUNTRYWIDE HOME LOANS, INC. v. BANCFIRST (2011 OK CIV APP 111)**

TOPIC: **MORTGAGE PRIORITY**

RULING: **Line of Credit Mortgage Continues Until Released**

FACTS: Borrower took a first mortgage on their home and a second mortgage for a line of credit, giving a mortgage on their home. Borrower took a third mortgage on their home and used the proceeds to pay off the first and second mortgages. Release of first mortgage was filed, but not on the second mortgage (which was for a line of credit). Borrower continued to use the line of credit on the second mortgage. When the borrower defaulted on the third mortgage, a mortgage foreclosure was granted, and the holders of the second and third mortgages asked the

court to decide their priorities.

TRIAL COURT RULING: Granted second mortgage holder priority because no release was filed.

COURT OF CIVIL APPEALS RULING: Affirmed.

6. **BORGES v. WALLER (2011 OK CIV APP 127)**

TOPIC: **GUARANTOR'S LIABILITY**

RULING: **Reduction of Rent Reduces Guarantor's Obligation**

FACTS: A landlord granted a tenant's lease, with initially $9,000/month for rent. Landlord and tenant subsequently reduced the rent to $6,000/month. The landlord then sought to recover the $3,000/month difference from the guarantors of the lease. The tenant was not in default.

TRIAL COURT RULING: Granted summary judgment to guarantors. The obligation of the guarantor is measured by the default, and there is none. The $3,000 reduction in rent is a mutual agreement and not a default.

COURT OF CIVIL APPEALS RULING: Affirmed.

7. **FLAGG v. FAUDREE (2012 OK CIV APP 4)**

TOPIC: **ADVERSE POSSESSION**

RULING: **Intent to Adversely Possess Another Land Is Not Necessary for Adverse Possession**

FACTS: A party occupied and used lands (29 acres) under fence with their own lands for 23 years, and sold such lands to another. Just before the sale, but after the 15 years adverse possession period had passed, the record owner sent a letter to the occupants/sellers asserting ownership, but took no further action to reoccupy the lands. The buyers sued to quiet title by

adverse possession, "tacking" their sellers' possession with their own.

TRIAL COURT RULING: The sellers did occupy the lands, but "testified in her deposition that if she had known someone else owned the 29 acres, she would not have tried to take ownership of it." The trial court ruled that, absent an intent to adversely possess another's land, it is not adverse possession.

COURT OF CIVIL APPEALS RULING: Reversed. Intent is not a necessary element; only occupancy and use for the prescribed time.

8. **BANK OF KREMLIN v. DAVIS (2012 OK CIV APP 7)**

TOPIC: **MERGER OF NOTES**

RULING: **Admission that Notes Had Merged Bound Creditor**

FACTS: Parties Sue and Lance gave a note and mortgage ("small note") to CNB. Third party Davis paid off obligation owed by Sue and Lance to CNB on small note. Lance and Amanda gave a note and mortgage ("big note") to Davis. A different lender (Kremlin) sought to foreclose a separate mortgage owed by Lance, and then Davis sought to foreclose the "small note" and joined Sue to do so.

TRIAL COURT RULING: The "small note" was extinguished and released by Davis' payment (thereby releasing Sue from that obligation), and the "small note" was also merged (by Davis' admission) into the "big note" (owed by Lance and Amanda). Hence, Sue did not owe anything. Each party was directed to pay their own attorney fees.

COURT OF CIVIL APPEALS RULING: Affirmed as to Sue owing nothing to Davis under the "small note." Because

(1) Davis admitted the "obligations merged," and

(2) the future advances clause in the "small note" cannot apply since Sue was not a party

to the later "big note." Reversed to grant Sue her attorney fees, because 12 O.S. §936(A), which awards attorney fees to enforce a note, applies to either enforcing or defeating a note.

9. **NORTHWEST ROOFING SUPPLY, INC. v. ELEGANCE IN WOOD, LLC (2012 OK CIV APP 13)**

TOPIC: **MM LIEN PRE-LIEN NOTICE**

RULING: **MM Lien Pre-Lien Notice is Essential Element to Lien Enforcement**

FACTS: Homeowners employed general contractor and paid it for the work. General contractor failed to pay subcontractor. Subcontractor sued the homeowners to foreclose a materialman's lien. After suing and no answer being filed, default judgment was taken. Homeowners promptly sued to vacate judgment.

TRIAL COURT RULING: Trial court denied request to vacate.

COURT OF CIVIL APPEALS RULING: Reversed. Neither general contractor nor materialman gave the statutorily-required pre-lien notice. Therefore, the lien was invalid. Under 12 O.S. §1031, a judgment acquired by misstatements to the court can be vacated in 2 years. The materialman's assertion that the lien was properly "perfected" was false in light of the failure to give pre-lien notice.

10. **BEVERLY ENTERPRISES-TEXAS, INC. v. DEVINE CONVALESCENT CARE CENTER (2012 OK CIV APP 16)**

TOPIC: **PROPER VENUE**

RULING: **Guarantor's Venue can be Different from That of Tenant (Debtor)**

FACTS: Landlord in Oklahoma sued to enforce lease on a nursing facility located in Texas and to collect on a related guarantee. The tenant corporation had its headquarters in Texas and owned no property in Oklahoma. The president of the tenant, who signed the guarantee, lived in

Oklahoma.

TRIAL COURT RULING: Dismissed case for lack of jurisdiction.

COURT OF CIVIL APPEALS RULING: Affirmed dismissal as to Texas corporation due to absence of minimum contacts with Oklahoma, but reversed as to guarantee suit on Oklahoma resident. Permissive forum selection clause in guarantee allowing suit in Texas does not deny jurisdiction to Oklahoma courts.

11. **MATERIAL SERVICE CORPORATION v. ROGERS COUNTY BOARD OF COMMISSIONERS (2012 OK CIV APP 17)**

TOPIC: **INVERSE CONDEMNATION**

RULING: **Void Annexation Gives Rise to Damages**

FACTS: Landowner sought permit to mine lands. County annexed lands and thereby prevented such mining due to prohibition on mining in the annexed lands, due to zoning restrictions against mining. Company sued to vacate annexation and for related damages.

TRIAL COURT RULING: Granted order that annexation was void for lack of notice, and granted substantial monetary damages, and pre- and post-judgment interest, relating to lost opportunity to mine and sell products on then-current adjacent road projects. Awarded contingent attorney fees (25%) only on damages, but not on interest. Granted some but not all expenses.

COURT OF CIVIL APPEALS RULING: Affirmed damages including interest. Remanded to increase attorney fees (25%) to apply to interest recovered, and to grant all expenses.

12. **STATE EX REL. DEPARTMENT OF TRANSPORTATION v. WOLFE (2012 OK CIV APP 20)**

TOPIC: **CONDEMNATION**

RULING: **Landowner Cannot Assert Neighbor's Rights to Increase Own Damages**

FACTS: ODOT condemned part of a parcel of land and, because such taking made the remaining land landlocked, it condemned additional adjacent land to give a right-of-way to the initial condemnee. Initial condemnees objected to the commissioners' report asserting:

(1) ODOT cannot take adjacent land for the "private benefit" of the initial condemnee, and

(2) therefore the commissioners' award must be increased to treat the whole tract as being taken because the remainder became landlocked.

TRIAL COURT RULING: Denied landowners' complaint.

COURT OF CIVIL APPEALS RULING: Affirmed. Initial landowners cannot "vicariously" assert neighbor's rights to oppose condemnation of neighbor's land.

13. **BARRETT v. HUMPHREY (2012 OK CIV APP 28)**

TOPIC: **LEGAL DESCRIPTION**

RULING: **Legal Description in a Journal Entry is Essential to Create an Easement**

FACTS: Person was granted a roadway easement in an earlier judgment. The holder of the roadway easement built a dirt bridge to use the roadway. A storm eroded the bridge and a dispute arose as to whether landowner's storage of barrels and equipment caused the excessive erosion. Easement holder sued for damages to bridges.

TRIAL COURT RULING: Trial court accepted existence of the easement, and ruled the landowner's barrel lids caused the bridge drain pipes to be clogged causing damage to the bridge.

COURT OF CIVIL APPEALS RULING: Reversed and remanded. The earlier court order recognizing an easement did not contain a legal description for the easement, so none was created. The landowner's barrels and lids were downstream and, therefore, there was no

evidence they went upstream to block the bridge drainage pipes. The trial court must determine whether there was an easement and to create a legal description for it, and must reconsider the landowner's duty to the easement holder and whether it was violated.

14. **FERGUSON ADVISORS, LLC v. MALHERBE (2012 OK CIV APP 33)**

TOPIC: **REAL ESTATE COMMISSION**

RULING: **Realtor Can Make Commission Contingent on Seller Recovering Post-Closing Payments**

FACTS: Realtor was entitled, by contract, to a commission from the seller at the closing of the sale. At or before closing, the realtor signed an agreement deferring part of his commission until the balance of the purchase price was paid (post-closing). The balance of the price was never paid, and the lands were deeded back to the seller (who held a carry-back mortgage). Realtor requested the balance of his commission, and, when he was denied payment, he sued the seller.

TRIAL COURT RULING: Granted realtor's motion.

COURT OF CIVIL APPEALS RULING: Reversed. Realtor's agreement to delay the balance of the commission, until the balance of the purchase price was paid, was a condition precedent to his right to the commission.

15. **F & M BANK & TRUST CO. v. GARDNER CONSTRUCTION COMPANY (2012 OK CIV APP 38)**

TOPIC: **MM LIEN PRIORITY**

RULING: **Vendor Contracting With Pre-Owner Takes Subject to Purchase Money Mortgage**

FACTS: Vendor provided materials to the construction site before the contracting party

acquired title to the land involved. Lender advanced money to purchase the land and to pay vendors. When borrower failed to pay the mortgage, a foreclosure began. The lender and vendor fought over priorities of their liens.

TRIAL COURT RULING: Trial Court ruled for lender saying any vendor contracting with an owner prior to the owner's purchase of the land takes a junior position behind a purchase money lender (i.e., loan proceeds were used to purchase the land to which everyone's lien attaches).

COURT OF CIVIL APPEALS RULING: Affirmed.

16. **STATE EX REL. DEPT. OF TRANSPORTATION v. SHERRILL (2012 OK CIV APP 43)**

TOPIC: **CONDEMNATION VALUATION**

RULING: **Landowner Can Testify as to Value, and Jury Can Give "Per Acre" Valuation**

FACTS: When lands were condemned by ODOT and there was a jury trial over valuation, three witnesses testified: landowner, landowner's appraiser, and ODOT's appraiser. Jury returned a per acre value, which the judge multiplied by the acreage to get a total value.

TRIAL COURT RULING: The court rejected ODOT's complaint that the landowner could not testify, even though he used "non-comparable" lands, because landowners can testify, and, because the jury's number was between the high and low valuations. The court rejected ODOT's complaint that the jury verdict was invalid because it was a per-acre value and not a total value.

COURT OF CIVIL APPEALS RULING: Affirmed.

17. **McGLOTHLIN v. LIVINGSTON (2012 OK CIV APP 48)**

TOPIC: **TITLE BY ACQUIESCENCE**

RULING: **A Fence Does Not Automatically Prove Acquiescence or Adverse Possession**

FACTS: A north/south fence lien angled so that it went at a diagonal so that each adjacent landowner had some land on the other side of the fence for about 70 years. There was a roadway, initially a dirt trail, running on the east side of the fence connecting the section line on the north to property owners on the south. The landowners to the south sued the eastern landowners to keep the north/south roadway open, and settled by taking an easement and in turn agreeing to pave the road. A dispute arose between the east and west landowners, with the east landowners suing to quiet title.

TRIAL COURT RULING: This matter was considered in the trial court twice with an intervening appeal. In both instances, the trial court quieted title in each owner as to the lands on their side of the fence, relying on both title by acquiescence and adverse possession.

COURT OF CIVIL APPEALS RULING: Reversed. Neither theories were proven. A fence does not constitute a boundary line by acquiescence absent:

(1) uncertainty of boundary, and

(2) agreement to use the fence as the boundary.

Therefore, here there is no evidence of title by acquiescence. The roadway was used by multiple persons, so east landowner cannot claim such land by adverse possession. Roadway easement was granted to the east and west landowners, and to the landowners to south.

18. **MILL CREEK LUMBER & SUPPLY CO. v. FIRST UNITED BANK AND TRUST CO. (2012 OK CIV APP 53)**

TOPIC: **MM LIEN PRIORITY**

RULING: **Replaced Construction Mortgage is Junior to Intervening MM Lien**

FACTS: A construction mortgage was filed on a residence. Thereafter, materials were provided. The construction mortgage was released and a new construction mortgage was filed,

including language saying there were no liens, other than those "of record." When the vendor was not paid, it filed an MM lien and sued to foreclose such lien. The lender joined the suit, claiming its mortgage was senior to the vender's lien due to UCC language and equitable subrogation.

TRIAL COURT RULING: The trial court granted summary judgment to vendor.

COURT OF CIVIL APPEALS RULING: Affirmed. The UCC argument fails due to its express limitation to fixtures, and not to building materials. The equitable argument fails because the "pre-materials-delivery" construction mortgage was released, and because, while the new replacement construction mortgage was filed after the materials were delivered but before the vendor's lien was filed, the filing of the vendor's lien "related back" to the date the first materials were provided. So, the vendor wins.

19. **BANKERS TRUST CO. OF CALIFORNIA N.A. v. WALLIS (2012 OK CIV APP 56)**

TOPIC: **STATUTE OF REPOSE**

RULING: **Repose Relates to Initiating Action and Not Completing It**

FACTS: A foreclosure of a note and mortgage was timely commenced, and, after being dismissed, was again timely commenced. After numerous motions and an intervening appeal, the debtor sought to have the action dismissed with prejudice under 12 O.S. §301, because the case continued beyond the 7-year note and 10-year mortgage statute of repose.

TRIAL COURT RULING: Trial court dismissed the foreclosure with prejudice.

COURT OF CIVIL APPEALS RULING: Reversed, because such interpretation of the statute was absurd and would encourage and reward litigation-delaying tactics.

20. **ROGERS v. BAILEY (2011 OK 69)**

TOPIC: **TRYING TITLE IN F.E.D.**

RULING: **Vague Allegations of Ownership Justifies Transferring from FED to District Court**

FACTS: Mother sued daughter in forcible entry and detainer action. Daughter asserted title to subject premises, and requested removal to District Court to try title.

TRIAL COURT RULING and COURT OF CIVIL APPEALS RULING: Trial Court and Court of Civil Appeals determined:

(1) defendant/tenant's request to transfer to District was untimely as being less than 72 hours before hearing, and

(2) allegations of ownership lacked sufficient detail.

Court of Appeals Affirmed.

SUPREME COURT RULING: Vacated and reversed. Assertions of ownership can be made in FED at time of hearing, and even scant allegations of equitable ownership are enough to support a transfer to District Court.

21. **VALDEZ v. OCCUPANTS OF 3908 SW 24TH STREET (2011 OK 99)**

TOPIC: **TAX SALE NOTICE**

RULING: **Notice of the Tax Sale to only One of the Multiple Owners Makes Sale Void**

FACTS: Real Property was held in joint tenancy by two persons. When they failed to pay ad valorem taxes, a third party bought a tax certificate and later acquired a tax deed. The notice supporting the tax deed only went to one of the two owners. The two prior owners sued to redeem the property from the taxes and to quiet title.

TRIAL COURT RULING and COURT OF CIVIL APPEALS RULING: Ruled for buyer but only as to a 1/2 interest.

SUPREME COURT RULING: Vacated Court Civil Appeals ruling and reversed Trial Court. Invalidity of notice to one owner made the entire sale invalid.

OKLAHOMA SUPREME COURT "STANDING" CASES (2012)

(last revised 07-13-12)

(prepared by Monica Wittrock)

Case #	Date	Plaintiff	Defendant	P-Atty	D-Atty	County/Judge	Lower Court	Supreme Court / Justice Opinion	Comments
2012 OK 3	01/17/12	Deutsche Bank	Brumbaugh	Phillips Murrah	Phillip Taylor	Tulsa County Morrissey	Summary Judgment	Reversed & Remanded (Combs) **Published**	Endorsement in Blank No evidence in record that P was holder or had rights of holder prior to filing No standing = Reversed and Remanded to determine when P acquired interest in note **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill
2012 OK 4	01/17/12	Deutsche Bank	Byrams	Kivell Rayment	Phillip Taylor	Tulsa County Sellers	Summary Judgment	Reversed & Remanded (Combs)	No Endorsement. Assignment of Mortgage filed 1 month after filing Assignment of Mortgage is of no consequence; mortgage follows note No standing = Remanded to determine if P has "rights of a holder" **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC
2012 OK 10	02/14/12	HSBC Bank	Lyon	Kivell Rayment	Phillip Taylor	Rogers County Post	Summary Judgment	Affirmed (Combs)	Endorsement in Blank (filed with 2nd Amended Petition) Standing established because P provided evidence with 2nd Amended Petition Affirmed = No contest to validity of note or default was raised **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill

2012 OK 14	02/28/12	Deutsche Bank	Matthews	Baer Timberlake	Pro Se	Creek County Parish	Summary Judgment	Reversed & Remanded (Combs)	Endorsement to P occurred 6 months after Petition, but attached to MSJ No standing = P did not establish holder statue prior to filing Petition Remanded with instructions to dismiss without prejudice Note: Gurich & Winchester dissent – issue is not standing but real party in interest **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
2012 OK 15	02/28/12	Deutsche Bank	Richardson	Baer Timberlake	Delluomo Crow	Oklahoma County Dan Owens	Summary Judgment	Reversed & Remanded (Combs)	Endorsement in Blank attached to MSJ P must show "entitled to enforce" prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note Note: Gurich & Winchester dissent – standing may be established after filing of petition **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
2012 OK 22	03/06/12	CPT	Kham	Baer Timberlake	Phillip Taylor	Tulsa County Cantrell	Default Judgment	Reversed & Remanded (Combs)	MERS Discussion Endorsement in Blank Standing challenged on Motion to Vacate Judgment (after Sheriff's Sale) No standing = Plaintiff failed to present evidence that it was the holder (attorney had note on his person on Motion to Vacate, but did not present for record); Reversed and Remanded to determine whether P had rights of a holder prior to the filing of the petition Note: Gurich and Winchester dissent – standing must be challenged during proceedings;

									D waived standing since it was not questioned until after Sheriff's Sale; issue is real party in interest **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal MERS CASES CITED: Landmark, Ward
2012 OK 23	03/06/12	Bank of America	Kabba	Kivell Rayment Baer Timberlake	J.R. Matthews	Cleveland County Lucas	Summary Judgment	Reversed & Remanded (Combs)	Endorsement in Blank – filed with MSJ P must show "entitled to enforce" prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note; if after petition filed, action should be dismissed without prejudice Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
2012 OK 24	03/06/12	JP Morgan Chase	Eldridge	Baer Timberlake Phillips Murrah	Marygaye LeBoeuf [David Eldridge – pro se]	Canadian County Miller	Summary Judgment	Reversed & Remanded (Combs)	Note (not Endorsed) and Assignment of Mortgage presented to court at pre-trial hearing Question as to merger of P entities Standing not raised until one year after judgment P must show "entitled to enforce" prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note; if after petition filed, action should be dismissed without prejudice Note: Gurich & Winchester dissent (in part) – standing may be established after filing of petition; P should be allowed to

									amend **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal
2012 OK 25	04/03/12	BAC Home Loan Servicing, LP	Swanson	Baer Timberlake	Pro Se	Cert from CCA which affirmed trial court	Summary Judgment	Reversed & Remanded (Combs)	Endorsement in Blank – filed with Petition P must show "entitled to enforce" prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note; if after petition filed, action should be dismissed without prejudice Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend **CASES CITED:** Brumbaugh
2012 OK 26	04/03/12	NTEX Realty	Tacker	Charles Ward	Phillip Taylor	Rogers County Condren	Summary Judgment	Reversed & Remanded (Combs)	Endorsement in Blank undated – filed with MSJ P must show "entitled to enforce" prior to filing action No standing = Reversed and Remanded to determine when P acquired interest in note; if after petition filed, action should be dismissed without prejudice Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend **CASES CITED:** Brumbaug, Gill
2012 OK 32	04/10/12	U.S. Bank	Moore	Kivell Rayment	Gary Blevins	Oklahoma County Dixon	Summary Judgment	Reversed & Remanded (Combs)	MERS – Assignment to P was executed AFTER suit, but effective BEFORE TC entered JE for P; D filed Chapter 7 and filed Petition to Vacate P must show "entitled to enforce" prior to filing action No standing = Reversed and

									Remanded Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal, Brumbaugh
2012 OK 43	05/01/12	U.S. Bank	Alexander	Baer Timberlake	Michael Warkentin	Cleveland County Lucas	Summary Judgment	Reversed & Remanded (Combs)	MERS – Assignment to P was executed AFTER suit, but effective 70 days BEFORE TC entered JE for P; D filed Chapter 7 and filed Petition to Vacate P must show "entitled to enforce" prior to filing action; MERS did not show it had authority to assigned No standing = Reversed and Remanded Note: Gurich & Winchester dissent – standing may be established after filing of petition; P should be allowed to amend **CASES CITED:** Doan, Hendrick, Fent. Lujan, Gill + Engle, BAC + Veal, Brumbaugh
2012 OK 49	05/29/2012	Residential Funding	Adams	Baer Timberlake	Phillip Taylor		Summary Judgment	Reversed & Remanded (Combs)	Same standing and proof issues as above except Court finds that the "note" is not an instrument affecting real estate under 16 O.S. Sec . 93 (and does not require indorsement to be executed Pres or VP).
2012 OK 54	06/12/2012	Wells Fargo Bank	Heath	Kivell Rayment	Phillip Taylor	Tulsa County Cantrell	Summary Judgment	Reversed and Remanded (Combs)	Same standing and proof issues as above Alexander case. D filed Chapter 7 and filed Petition to Vacate. Court stated in its Conclusion "If a plaintiff claims it is the holder of the note and obtains an indorsement after the suit is filed, then it should

									initiate the procedure for curing this defect," footnoting the Lyan case where the court alloed the evidence to be attached to the second amended petition which "effectively cured any lack of standing in the initial filing."
2012 OK 55	06/12/2012	U.S. Bank	Baber	Phillips Murrah	MaryGaye LeBoeuf	Oklahoma County Parrish	Summary Judgment	Reversed & Remanded (Combs)	P filed a non-indorsed copy of the note at every step of the proceeding. Court found there was a question of fact as to when P acquired note and remanded back for determination as to if and when P because a "person entitled to enforce the note."
OTHER CASES:									
OK Ct App 107,258	CERT DENIED 02/16/2012	MERS	Wilson	Kivell Rayment	Derryberry & Neifeh	Oklahoma County Gurich	Summary Judgment	Affirmed by CCS Division 1 CERT DENIED	Appeal is from confirmation of sale and denial of motion to vacate, not from judgment of foreclosure; argument by D was that MERS lacked standing; Judgment in favor of MERS was procured by fraud (because MERS misrepresented its interest) Issue is "real party in interest" and can be waived; challenge was not raised timely and deemed waived; Issue of fraud by MERS was also not raised timely and deemed waived [Failure to raise the issue prior to judgment = admission of fact that MERS was holder of the note] 11/28/2011 SCt granted Writ of Cert 02/16/2012 SCt withdraws Order Granting Cert
2012 OK 34	04/16/12	Whitehall Homeowners Association	Appletree Enterprise, Inc.				Order Denying Appellee's	Petition for rehearing granted	Failure to file Certificate of Service of Final Order - time to commence appeal starting when

							Motion to Dismiss Appeal		party received actual notice.

22. **DEUTSCHE BANK NATIONAL TRUST v. BRUMBAUGH**[a] **(2012 OK 3)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to Long Beach Mortgage Company. Thereafter, Borrowers entered into loan modification agreement with U.S. Bank, N.A.(successor trustee to Wachovia Bank, N.A., formerly known as First Union National Bank), as trustee for Long Beach Mortgage loan 2002-1. The borrower defaulted and foreclosure was filed by Deutsche Bank National Trust, as Trustee for Long Beach Mortgage Loan 2002-1. The petition asserted it was the current holder of the note and mortgage, but failed to attach any mortgage assignments or notes or documents. Lender filed motion for summary judgment, with affidavit saying it holds note and mortgage, but not attaching any new documents and not saying when it acquired the note and mortgage. At the hearing on the motion for summary judgment, the note was presented showing

(1) it had possession, and

(2) it was endorsed "in blank" (i.e., to bearer).

Borrower said lender did not prove it holds note and mortgage.

TRIAL COURT RULING: Trial court granted summary judgment to lender.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt.

[a] 1 of 15 2012 Oklahoma Supreme Court cases on Foreclosing lender's standing

23. **DEUTSCHE BANK NATIONAL TRUST COMPANY v. BYRAMS* (2012 OK 4)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to Argent Mortgage Company, LLC. Foreclosure was filed by Deutsche Bank. Lender filed a motion for summary judgment and attached an assignment of mortgage dated after the petition was filed, going from Argent to Deutsche Bank, signed by Citi Residential Lending, Inc. Borrower said lender did not prove it holds the note.

TRIAL COURT RULING: Grated summary judgment to lender.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Ownership of mortgage does not prove ownership of note, since mortgage follows the note.

24. **HSBC BANK USA v. LYON* (2012 OK 10)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to Wells Fargo Bank, N.A. Foreclosure was filed by HSBC Bank, USA. Lender filed for summary judgment, asserting it held an assignment of mortgage dated and filed after the petition was filed. The note attached to the petition was unendorsed.

TRIAL COURT RULING: The first motion for summary judgment was denied and the case

dismissed, with 20 days to amend. 2nd Amended Petition was filed attaching note showing blank endorsement signed by original lender. Second motion was granted.

SUPREME COURT RULING: Affirmed.

25. **DEUTSCHE BANK NATIONAL TRUST COMPANY v. MATTHEWS* (2012 OK 14)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to Chase Bank USA. Foreclosure was filed by Deutsche Bank, with an unendorsed note attached to petition. The lender filed a motion for summary judgment with an assignment of mortgage attached signed 6 months after the petition was filed. This motion included allonges of the note showing it was transferred after the petition was filed. At the hearing on the motion for summary judgment, the note was presented showing

(1) it had possession, and

(2) it was endorsed "in blank" (i.e., to bearer).

TRIAL COURT RULING: Trial court granted summary judgment to lender.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Ownership of mortgage does not prove ownership of note, since mortgage follows the note.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is

filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

26. **DEUTSCHE BANK NATIONAL TRUST COMPANY v. RICHARDSON* (2012 OK 15)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to WMC Mortgage Corporation. Foreclosure was filed by Deutsche Bank. The lender filed a motion for summary judgment, with a note attached with an undated blank endorsement. There was also an assignment of mortgage from MERS as nominee for WMC, dated and filed after the petition was filed.

TRIAL COURT RULING: Trial Court granted summary judgment to lender.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Ownership of mortgage does not prove ownership of note, since mortgage follows the note.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

27. **CPT ASSET BACKED CERTIFICATES, SERIES 2004-EC1 v. KHAM* (2012 OK 22)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to Encore Credit Corporation, although the mortgage names MERS as mortgagee. An unendorsed note was attached to the petition. An assignment of note and mortgage to Deutsche Bank was signed and filed by MERS. Default judgment was taken. On the date for the hearing to confirm the foreclosure sale, the borrowers sought to vacate and then to appeal the initial default judgment, due to lack of standing.

TRIAL COURT RULING: Default judgment confirmed and motion to vacate denied.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Assignment of a mortgage alone does not transfer a note, and MERS has no claim of interest in this note (or any note as nominee).

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

28. **BANK OF AMERICA, NA v. KABBA* (2012 OK 23)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to BNC Mortgage, Inc. Foreclosure was filed by Bank of America, and did not attach a note or endorsements. Bank of American filed an assignment of mortgage (signed by MERS) 9 months after the petition. The lender filed a motion for summary judgment attaching for the first time a note with an undated endorsement in blank.

TRIAL COURT RULING: Summary judgment was granted to lender.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Ownership of mortgage does not prove ownership of note, since mortgage follows the note.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

29. **J.P. MORGAN CHASE BANK N.A. v. ELDRIDGE* (2012 OK 24)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to J.P. Morgan. Foreclosure was filed by Chase/Milwaukee, with nothing attached. The mortgage was assigned 6 months after the petition was filed. At a pre-trial hearing, the unendorsed note was produced.

TRIAL COURT RULING: The motion for summary judgment was granted to the lender.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Ownership of mortgage does not prove ownership of note, since mortgage follows the note.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

30. **BAC HOME LOAN SERVICING, L.P. v. SWANSON* (2012 OK 25)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given. There was an allonge on the petition transferring in the note to Countrywide Bank. Foreclosure was filed by BAC Home Servicing, LP. When BAC filed its motion for summary judgment, it included an undated blank endorsement on the note.

TRIAL COURT RULING and COURT OF CIVIL APPEALS RULING: Summary judgment to the lender was granted, and affirmed.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

31. **NTEX REALTY, LP v. TACKER* (2012 OK 26)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to Home Funds Direct, Inc. Foreclosure was filed by NTEX Realty, LP, with an unendorsed note attached. Lender filed a motion for summary judgment, including an undated allonge with the note transferring it to the foreclosing lender.

TRIAL COURT RULING: The trial court granted a summary judgment to the lender.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

32. **U.S. BANK v. MOORE* (2012 OK 32)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for**

Standing

FACTS: Note and mortgage were given to Colonial Bank, with MERS as nominee on the mortgage. Foreclosure was filed by US Bank, with no note or mortgage attached. When the motion for summary judgment was filed, it included the note, mortgage, assignment of mortgage, and an affidavit in support. The assignment of mortgage by MERS was to Chase Home Finance, and was executed after the petition was filed.

TRIAL COURT RULING: The trial court granted summary judgment to the lender.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Ownership of mortgage does not prove ownership of note, since mortgage follows the note.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

33. **U.S. BANK, N.A. v. ALEXANDER* (2012 OK 43)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to MILA, Inc. Foreclosure was filed by Wells Fargo, with an unendorsed note and a mortgage attached. US Bank was substituted for Wells Fargo. A default judgment was given, but was vacated a day later. A motion for summary

judgment was filed with an affidavit regarding facts, and an assignment of mortgage by MERS. The assignment of mortgage was executed after the petition was filed and was to be effective before the mortgage was signed. After the motion for summary judgment was denied, a second motion was filed with the note including an undated allonge in blank.

TRIAL COURT RULING: The trial court granted the motion for summary judgment.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Ownership of mortgage does not prove ownership of note, since mortgage follows the note.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

34. **RESIDENTIAL FUNDING REAL ESTATE HOLDINGS, LLC v. ADAMS* (2012 OK 49)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to Gateway Mortgage Group. Foreclosure was filed by Residential Funding, including the note and mortgage, with an endorsement on the note from Gateway to "Option One Mortgage," and a blank additional endorsement by "Option One Endorsement Corporation." A motion to substitute RAHI Real Estate as lender was granted.

When the lender filed a motion for summary judgment, it included an assignment of mortgage to RAHI. The assignment of mortgage is executed after the petition was filed, but does not attempt to assign the note. The assignment is executed by Sand Canyon Corp. fka Option One Mortgage Corporation.

TRIAL COURT RULING and COURT OF CIVIL APPEALS RULING: The trial court granted the motion for summary judgment to Residential Funding, and it was affirmed.

SUPREME COURT RULING: Supreme Court rejected borrower's argument that a note cannot be endorsed by anyone except the same officer who can assign a mortgage (e.g., president or vice-president), and instead allowed a signature by a "shipping specialist." This holding establishes that a note is not an instrument affecting real estate.

Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Ownership of mortgage does not prove ownership of note, since mortgage follows the note.

[The dissent says the borrower failed to challenge the name discrepancy ("Corporate") and so there are no facts in dispute.]

35. **WELLS FARGO BANK, N.A. v. HEATH* (2012 OK 54)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to Option One Mortgage Corporation. Foreclosure was filed by Wells Fargo Bank, N.A., with the note, mortgage, and assignment of mortgage

attached to the petition. Note contained neither an endorsement nor an allonge. Assignment of mortgage did not assign the note. Motion for summary judgment was granted, and a sale was conducted.

TRIAL COURT RULING: A hearing to confirm the sale was set, but postponed until after the debtor's bankruptcy was completed. Debtor then sought to vacate initial judgment, but such motion was denied and the sale confirmed. At the hearing to vacate, the lender presented an undated allonge in blank.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt. Ownership of mortgage does not prove ownership of note, since mortgage follows the note.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

36. **U.S. BANK NATIONAL ASSOCIATION v. BABER* (2012 OK 55)**

TOPIC: **FORECLOSURE STANDING**

RULING: **Proof of Lender's Ownership of Note Before Petition is Essential for Standing**

FACTS: Note and mortgage were given to Ameriquest Mortgage Corporation, Inc. (with mortgage given to MERS as nominee). Foreclosure was filed by US Bank, N.A., with an unendorsed note and mortgage attached.

TRIAL COURT RULING: Motion for summary judgment by lender was granted, with unendorsed note and mortgage attached to such motion. Trail court denied motion to vacate.

SUPREME COURT RULING: Reversed and remanded to elicit proof lender

(1) holds note, and

(2) acquired note before petition was filed.

If not proven, case to be dismissed without prejudice. Debtor is not released of debt.

[NOTE: There was a dissent saying,

(1) it was wrong that proof of ownership of the note must be held when petition is filed, and

(2) standing is not jurisdictional and can, therefore, be waived.]

V. ATTORNEY GENERAL OPINIONS

HB1562 Landowners Bill of Rights Act
Sponsors: Representatives Jordan and Kay of the House, and Senators Treat, Marlatt, Shortey, and Brecheen of the Senate

Status: Signed into Law on April 30, 2012

The measure directs the Attorney General to "prepare a written statement that includes a 'Landowner's Bill of Rights' for a property owner whose real property may be acquired…through the use of…eminent domain authority…".

THE STATE OF OKLAHOMA

LANDOWNER'S BILL OF RIGHTS

PREPARED BY THE

OFFICE OF THE
ATTORNEY GENERAL OF OKLAHOMA

STATE OF OKLAHOMA LANDOWNER'S BILL OF RIGHTS

This Landowner's Bill of Rights applies to any attempt by the government or a private entity to take your property through a condemnation or other legal proceeding. The laws applicable to the Landowner's Bill of Rights can be found in Titles 27 and 66 of the Oklahoma Statutes.

1. You are entitled to receive just compensation if your property is taken for a public use.

2. Your property can only be taken for a public use.

3. Your property can only be taken by a governmental entity or private entity authorized by law to do so.

4. The entity must notify you that it wants to take your property.

5. The entity proposing to take your property must make a bona fide effort to negotiate to buy the property before it files a lawsuit to condemn the property – which means the condemning entity must make a good faith offer that conforms within Titles 27 and 66 of the Oklahoma Statutes.

6. You may hire an appraiser or other professional to determine the value of your property or to assist you in any condemnation proceeding.

7. You may hire an attorney to negotiate with the condemning entity and to represent you in any legal proceedings involving the condemnation.

8. Before your property is condemned, you are entitled to a copy of the commissioners' report which determines the injury you may sustain by the condemnation of your property and the amount of just compensation entitled to you.

9. If you are unsatisfied with the compensation awarded by the commissioners' report, or if you question whether the taking of your property was proper, you have the right to a trial by a jury or review by the district court judge. If you are dissatisfied with the trial court's judgment, you may appeal that decision.

CONDEMNATION PROCEDURE

Eminent domain is the legal authority certain entities are granted that allows those entities to take private property for a public use. Private property can include land and certain improvements that are on that property.

Private property may only be taken by a governmental entity or private entity authorized by law to do so. Your property may be taken only for a public use. That means it can only be taken for a

purpose or use that serves the general public. Oklahoma law prohibits the taking of your property solely for economic development.

Your property cannot be taken without just compensation. Just compensation includes the market value of the property being taken. It may also include certain damages if your remaining property's market value is diminished by the acquisition itself or by the way the condemning entity will use the property.

HOW THE TAKING PROCESS BEGINS

The taking of private property by eminent domain must follow certain procedures. First, the entity that wants to condemn your property must notify you. Since additional requirements apply to entities using government funds when exercising eminent domain, the entity must also specify to you whether they intend to use government or private funds for the taking.** Second, the condemning entity must make a bona fide effort to negotiate with you to purchase the property. You have the right to discuss the negotiation with others and to either accept or reject any offer made by the condemning entity.

CONDEMNATION PROCEEDINGS

If you and the condemning entity do not agree on the value of your property, the entity may begin condemnation proceedings. Condemnation is the legal process that eligible entities utilize to take private property. It begins with a condemning entity filing a petition for condemnation in district court, in the county where the property is located.

COMMISSIONERS' REPORT

After the condemning entity files a condemnation claim in court, and after ten (10) days' notice to you, the judge will appoint three disinterested landowners to serve as commissioners. These commissioners must take an oath to perform their duties impartially and justly. The commissioners are not legally authorized to decide whether the condemnation is necessary or if the public use is proper. Their role is limited to assessing just compensation for you.

After being appointed, the commissioners will inspect the property and consider the injury you may sustain by the taking. The commissioners must make a report in writing which determines the quantity, boundaries and just compensation of your property that is being taken. The commissioners must give their report to the district court clerk, who will file and record the report. Once the commissioners' report is filed, the district court clerk has ten (10) days to forward a copy of the commissioners' report and a notice of time limits for review and appeal to all parties. After the commissioners' report is filed, the condemning entity may take possession of the condemned property, even if either party seeks judicial review of the award. To take possession of your property, the condemning entity must first pay the county clerk the amount assessed and reported by the commissioners.

The commissioners' report is significant to you not only because it determines the amount that qualifies as just compensation, but also because it impacts who pays the cost of the condemnation proceedings, as noted in the next section.

OBJECTION TO THE COMMISSIONERS' REPORT

If either the landowner or the condemning entity disagrees with the commissioners' award, two options are available. Either party may file written exceptions or objections with the district court clerk's office within thirty (30) days after the report is filed. If an exception/objection is filed, the court must confirm the awarded amount, reject the awarded amount, or order a new appraisement if either party shows good cause. Alternatively, either party may submit a written demand for a jury trial with the district court clerk's office, within sixty (60) days after the report is filed. If you wish to make this objection, you must file it in writing with the court. If either party demands a jury trial, the trial will be conducted in the same manner as other civil actions are conducted in district court and the jury will assess the amount of damages from the taking. If the party demanding the jury trial does not receive a verdict more favorable to him than in the commissioners' report, then that party may be required to pay all district court costs. This means, if you demand a jury trial and the jury determines the commissioners' award was sufficient, you might be required to pay all the district court costs related to the jury trial.

Either party may ask the court to extend the time limit for filing an exception or demand for jury trial if the court clerk failed to give notice within ten (10) days from the report filing. The court may extend the time for filing to up to twenty (20) days after the application is heard.

RIGHT TO APPEAL

After trial, either party may appeal any judgment entered by the court to the Supreme Court of Oklahoma. If you appeal the judgment, you will be liable for the costs of the appeal, unless the Supreme Court determines you are entitled to a greater amount of damages than the commissioners awarded.

**EMINENT DOMAIN WITH GOVERNMENTAL FUNDS

When an entity uses federal, state, or local funds to acquire your private property for public use, the entity must comply with additional procedures before beginning the condemnation process. First, the entity must appraise the real property before initiating negotiations to purchase your property. The entity must give you the opportunity to accompany the appraiser during the inspection of your property, unless a federal law provides an exception. Second, after the appraisal, the entity must promptly offer you an amount reasonably believed to be just compensation. This amount cannot be less than the amount of the approved appraisal of the fair market value of the real property. The entity must provide you a written statement of the established just compensation amount they are offering you and a summary of how the entity came to this conclusion. If it is determined that damages to your remaining property will occur, the just compensation offered to you for those damages must be stated separately.

You will not be required to surrender possession of your real property to the condemning entity, even if you accepted the approved offer price or, after the condemnation proceedings, the compensation award amount has been determined, until the condemning entity pays the agreed purchase price or deposits the purchase price with the state court.

If the property taken is your dwelling, business or farm operation, the condemning entity must give you at least ninety (90) days' written notice from the date you are required to move from your dwelling or move your business or farm operation to another location.
The statute forbids the condemning entity from taking any coercive action to compel you to agree on the price of your property. This means that the entity cannot advance the time of condemnation nor can the entity postpone depositing the fund in court for your use.
You have the right to donate your property or compensation paid, if you choose, after you have been fully informed of your right to just compensation.

If private property was condemned with the use of governmental funds, and the property is not used for the purposes for which it was condemned or for another public use, this property is called surplus property. You have the right of first refusal to the surplus property. This means you have the right to purchase the surplus property at the appraised value or the original price at which the entity purchased that portion of the property, whichever is less, before anyone else.

REIMBURSEMENT OF EXPENSES AFTER ACQUISITION

The condemning entity must, as soon as practicable after paying the purchase price, reimburse you for certain expenses you incur as a result of the taking. These expenses include: 1) recording fees, transfer taxes and similar expenses incidental to conveying your real property; 2) penalty costs for prepaying your preexisting recorded mortgage; and 3) their pro rata portion of real property taxes paid.

REIMBURSEMENT OF EXPENSES IN OTHER INSTANCES

The court may also determine that the condemning entity must reimburse you for your reasonable attorney, appraisal, engineering and expert witness fees, you actually incurred because of the condemnation proceedings, if the entity abandons the proceedings or where the final judgment is that your property cannot be acquired through condemnation. The court may also award these expenses if the jury award exceeds the commissioners' award by at least ten percent (10%).

DISCLAIMER

The information in this statement is intended to be a summary of the applicable portions of Oklahoma state law as required by HB 1562, enacted during the Oklahoma 2012 Regular Session. This statement is not legal advice and is not a substitute for legal counsel.

ADDITIONAL RESOURCES

Further information regarding the procedures, timelines and requirements outlined in this document can be found in Oklahoma Statutes Title 27 Eminent Domain and Chapter 2 of Title 66 Railroads.

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))

[See: Article #227 at www.Eppersonlaw.com: "The Elusive Legal Malpractice Statute of Limitations for Attorney Title Opinions."]

B. NEED FOR STANDARDS

1. BACKGROUND AND AUTHORITY OF STANDARDS

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

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

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

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

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

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

The Standards become binding between the parties:

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

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

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

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

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

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

2. IMPETUS FOR STANDARDS: PROBLEMS WITH SEEKING PERFECT TITLE

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

According to Am Jur 2d:

> *An agreement to sell and convey land is in legal effect an agreement to sell a title to the land, and in the absence of any provision in the contract indicating the character of the title provided for, the law implies an undertaking of the part of the vendor to make and convey a good or marketable title to the purchaser. A contract to sell and convey real estate ordinarily requires a conveyance of the fee simple free and clear of all liens and encumbrances. There is authority that the right to the vendee under an executory contract to a good title is a right given by law rather than one growing out of the agreement of the parties, and that he may insist on having a good title, not because it is stipulated for by the agreement, but on his general right to require it. In this respect, the terms "good title," "marketable title," and "perfect title" are regarded as synonymous and indicative of the same character of title. To constitute such a title, its validity must be clear. There can be no reasonable doubt as to any fact or point of law upon which its validity depends. As is sometimes said, a marketable title must be one which can be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence.* (underlining added)
> (77 Am Jur 2d §115 Title of Vendor: Generally; Obligation to furnish good or marketable title)

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

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

In the early law courts, titles as between vendor and purchaser were either good or bad; there was no middle ground. No matter how subject to doubt a purchaser might prove the title to be, he was under obligation to take it, unless he could prove that it was absolutely bad. But the courts of equity coined the expression "marketable title," to designate a title not necessarily perfect, or even good, in the law sense, but so free from all fair and reasonable doubts that they would compel a purchaser to accept it in a suit for specific performance. Conversely, an unmarketable title might be either one that was bad, or one with such a material defect as would cause a reasonable doubt in the mind of a reasonable, prudent, and intelligent person, and cause him to refuse to take the property at its full or fair value. Therefore the term "unmarketable title" includes both "bad titles" and "doubtful titles." Though originally there might have been a difference between a "good title" and a "marketable title," now the terms are used interchangeably. Other equivalent terms appear in the notes. A perfect record title may not be marketable, because of apparent defects, which cause reasonable doubts concerning its validity, and a good or marketable title may be far from perfect, because of hidden defects. In fact, under either the English system of unrecorded conveyances, or under the system afforded by our recording acts, "it is impossible in the nature of things that there should be a mathematical certainty of a good title." While examiners should be cautious in advising clients as to the acceptance of a title, neither should they frighten them by advertising these relatively infrequent dangers; and they must remember that a purchaser cannot

legally demand a title which is absolutely free from all suspicion or possible defect. He may require only such a title as prudent men, well advised as to the facts and their legal bearings, would be willing to accept. Many courts further hold that a doubt sufficient to impair the character of marketableness must be such as will affect the selling value of the property or interfere with the making of a sale.

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

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

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

Title insurance, like most types of insurance, insures against loss due to certain conditions. One of these conditions which triggers liability is “unmarketability of title”. Such term is defined in such policy as: “an alleged or apparent matter affecting the title to the land, not

excluded or excepted from coverage, which could entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title." (ALTA Owner's Policy (10-21-87)) Such definition is sufficiently circular to require the interpretation of the applicable State's law in each instance to determine whether specific performance would be enforced in such jurisdiction.

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

However, to the extent that a contract provision -- providing that the vendor must convey "marketable title" -- is interpreted to require title to be free from "all reasonable doubt", it opens the door to differences of opinion between persons of "reasonable prudence". As noted in Bayse:

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

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

examination attitudes resulting in differing conclusions as to the adequacy of the title.

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

> *When the examiner, upon the basis of these decisions, has found that the present vendor can convey a title which is good in fact, he must then ask whether the title has the additional characteristic of marketability. What constitutes a marketable title? Here again legal definitions are subordinate to functional meaning. What the purchaser of land wants is a title which not only can be defended but which can be presented to another examiner with the certainty that it will be unobjectionable. It is small comfort to the owner that he has not been disseized if he is unable to sell or mortgage. If one and the same examiner passed all titles in a given locality, the title which the examiner considered good as a practical matter would, of course, also be merchantable. But such is not the case, and the present examiner must anticipate that his client will in the future attempt to either sell or mortgage and that the same title will come under the scrutiny of some other examiner. In each of the decisions which an examiner has made in determining the validity of a title he has had to exercise sound legal and practical judgment. Will a second examiner, vested with the same wide discretion, reach the same conclusion? If his conclusion is different and he rejects the title, the professional reputation of the first examiner will be impaired and his client may suffer substantial financial loss. Faced with this uncertainty, many examiners have adopted a solution which emphasizes individual security rather than the general facility of land transfers. This is the practice known as "construing against title," or more picturesquely, as "flyspecking." These terms indicate that the examiner indulges in a minimum of presumptions of law and fact, demands full search of title in every instance, and places no reliance upon the statute of limitations. As a consequence he considers all errors of record as substantial. The result of even a **single examiner** in a community adopting this practice is to set up titles which are practically good in fact. Examiner **A** rejects a title on technical grounds. Thereafter, Examiner **B**, to whom the same problem is presented, feels compelled to reject any title presented to him which exhibits a similar defect. Examiner **A** is thereupon confirmed in the wisdom of his initial decision, and resolves to be even more strict in the future. It is sometimes said that the practice of construing against title reduces an entire bar to the standards of its most timorous member. This is an understatement, for the net effect is an extremity obtained only by mutual goading.*
>
> *The consequences of construing against title are iniquitous, and the practice itself is ridiculous in that it is predicated upon a theoretical perfection unobtainable under our present system of record land titles. Many titles which are practically*

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

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

1. The legal fees charged to the public are higher because each examination for a parcel must always go back all the way to sovereignty (or, in some states, back to the root of title);
2. The costs to cure minor defects are often relatively large compared to the risk being extinguished;
3. The unexpected costs to remedy problems already existing when the vendor came into title, which were waived by the vendor's attorney, are certainly not welcomed by the public; and
4. The prior examiner looks inept and/or the subsequent examiner looks unreasonable, when a preexisting defect is waived by one attorney and "caught" by the next.

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

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

> *Examiners themselves are human and will react in different ways to the same factual situation. Some are more conservative than others. Even though one examiner feels that a given irregularity will not affect the marketability of a title as a practical matter, he is hesitant to express his opinion of marketability when he knows that another examiner in the same community may have occasion to pass upon the title at a later time and would undoubtedly be more conservative and hold it to be unmarketable. Under these circumstances he is inclined to be more conservative himself and declare the title to be unmarketable. People do not like to be required to incur expense and effort to correct defects which do not in a practical sense jeopardize a title when they have already been advised that their title is marketable. The public becomes impatient with a system that permits such conservative attitudes.*
>
> *If the same examiner passed judgment upon all title transactions, this situation would remain dormant. Unfortunately such is not the case. Or if all examiners would hold the same opinion as to specific irregularities in titles, this complication would not arise. But this also is not the case. The result in many communities has been greatly depressive, sometimes tragic.* (underlining added) (Bayse: §7. Real Estate Standards)

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

> ***1.1 MARKETABLE TITLE DEFINED***
>
> *"A marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record."*

In response to this obvious need to avoid procedures that alienated the public and caused distance to grow between examiners, a movement began and mushroomed in a couple of decades

throughout the country to adopt uniform title examination standards. Such standards were adopted first in local communities by the practicing bar and then on a statewide basis. Although there is some competition among local bars for the place of honor, it appears that the local bar of Livingston County, Illinois adopted a set of 14 standards on April 7, 1923. Thereafter, in 1933 or 1934, the Gage County Nebraska Bar Association formulated 32 title standards. The Connecticut Bar, in 1938, became the first state to have statewide standards by adopting a set of 50. ("Increasing Marketability")

Over the years, since 1938, a total of 31 States have adopted statewide sets of Standards. Of these, there are currently 19 States which have sets of Standards which have been updated in the last 5 years. In the recent past, 4 States have adopted their first sets of Standards including: Vermont (1995), Arkansas (1995), Texas (1997) and Louisiana (2001). See the attached National Title Examination Standards Resource Center Report, and see my web site at www.eppersonlaw.com for more details on the status of Standards in other States.

C. NEWEST CHANGES TO TITLE STANDARDS

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

The following sections display and discuss the Proposals which were submitted to the Section and the House of Delegates for their approval. The text for the discussion is taken from the Annual Report published in the Oklahoma Bar Journal in October. This text was prepared by the Title Examination Standards Handbook Editor for the OBA Real Property Law Section, Jack Wimbish, a Committee member from Tulsa. Note that where an existing standard is being revised, a "legislative" format is used below, meaning additions are underlined, and deletions are shown by [brackets].

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

ATTACHED IS A SET OF REVISED TITLE EXAMINATION STANDARDS:

THE FOLLOWING 2012 T.E.S. REPORT WAS SUBMITTED TO THE NOVEMBER 15, 2012 ANNUAL REAL PROPERTY LAW SECTION MEETING AND THE NOVEMBER 16, 2012 OBA HOUSE OF DELEGATES MEETING AND HAS BEEN APPROVED. THESE STANDARDS ARE EFFECTIVE IMMEDIATELY UPON THEIR APPROVAL BY THE HOUSE OF DELEGATES.

2012 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE
OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2011, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 16, 2012. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Oklahoma City on Thursday, November 15, 2012.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 16, 2012. 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 No. 1

The Committee recommends a new Standard No. 14.3.1 to establish what is required to document the delegation of authority by the Manager of a limited liability company.

14.3.1. Delegation of Manager's Authority

The execution of an instrument affecting real estate on behalf of a limited liability company by a person in a capacity other than manager shall, in the absence of recorded evidence to the contrary, be deemed sufficient regarding the authority of such person to bind the limited liability company if an acknowledged document executed by a manager of the limited liability company delegating authority to such person is recorded in the office of the county clerk in the county in which the real estate is located. The document shall clearly evidence the delegation of the manager's rights and powers to the person in such person's individual, agent or officer capacity, as applicable, for the purpose of execution of the instrument or instruments on behalf of the limited liability company.

Authority:	Title 18 O.S. Sections 2013 & 2016
Comment:	In the event no manager has been appointed, the member or members of the limited liability company shall act as manager.

Proposal No. 2

The Committee recommends that Title Standard 23.1 D be amended to accurately reflect the provisions of 12 O.S. §735 as to the commencement point from which the initial five year term for the enforceability of a judgment is measured.

23.1. D. Duration of a Judgment Lien.
The lien of a judgment, which is dependent upon the enforceability of the judgment as detailed in 12 O.S. §735, ~~pursuant to 12 O.S. §706~~ runs from the date the judgment lien is created under 12 O.S. §706, until the judgment lien is extinguished by the failure to extend the lien of the judgment pursuant to 12 O.S. §759.

Authority: U.S. Mortgage v. Laubach, 2003 OK 67, 73 P.3d 887.

Comment: In the absence of completion of one of the listed actions under 12 O.S. §735, the endpoint of the initial term for the enforceability of the judgment is as follows:

Prior to November 1, 2002 - Five (5) years after the date the judgment is rendered in any court of record in this state.

On and after November 1, 2002 - Five (5) years after the date the judgment is filed in any court of record in this state.

Proposal No. 3

The Committee recommends adding additional authority to Standard 23.2. (E) to make the examiner aware of the holding in Dilbeck v. Dilbeck.

23.2 (E). Duration of Decree-Ordered Lien for Property Division or Support Alimony
An examiner shall disregard a lien for the payment of either property division or support alimony in a divorce decree as extinguished by operation of law within the following time frames:

1. A lien payable in a single lump sum with no stated due date is extinguished five (5) years after the date of pronouncement of the lien by the court in a divorce case;

2. a lien payable in a single lump sum with a stated due date is extinguished five (5) years after the due date of the lump sum obligation as set out in the divorce decree;

3. a lien payable in installments is incrementally extinguished as to each installment five (5) years after the due date of each installment, and the examiner shall disregard the lien, as extinguished, five (5) years after the due date of the final installment; and

4. a lien payable in a single lump sum which is due upon the occurrence of a designated event (e.g., sale of real property) is extinguished five (5) years after the designated event occurs. For constructive notice, evidence of the occurrence of the designated event must appear in the record.

Authority: First Community Bank of Blanchard v. Hodges, ~~907 P.2d 1047 (Okla. 1995)~~ 1995 OK 124; Record v. Record, ~~816 P.2d 1139 (Okla. 1991)~~ 1991 OK 85; Dilbeck v. Dilbeck, 2012 OK 1; 12 O.S. § 95; 42 O.S. § 23; and 12 O.S. § 696.2

Comment: The title examiner should confirm that the divorce decree has been filed with the court clerk in order to determine whether the time for appeal has run.

Authority: 12 O.S. § 696.2(E).

Proposal No. 4

The Committee proposes to amend Standard No. 25.6 B to accurately reflect the provisions of the latest amendments to 68 O.S. §§ 231 and 234.

25.6 B. Warrants Issued by the Oklahoma Tax Commission

The filing of a warrant issued by the Oklahoma Tax Commission in the county clerk's office on or after October 1, 1979, or in the court clerk's office before October 1, 1979, shall constitute and be evidence of the state's lien upon the title to any real property in that county owned by the taxpayer against whom such warrant is issued.

This lien shall remain in effect upon the title to any interest in real property until released or for a maximum of ten (10) years from the date of its filing. However, the liens created by the filing of tax warrants filed prior to November 1, 1989, will remain valid until November 1, 2001.

Prior to the release or extinguishment of any such tax warrant, the Oklahoma Tax Commission may refile the tax warrant ~~one time~~ in the office of the county clerk. A tax warrant so refiled shall constitute and be evidence of the state's lien upon the title to any interest in real property until released or for a maximum of ten (10) years from the date of the refiled tax warrant.

Comment: 68 O.S. §§ 231 and 234 were last amended effective ~~November 1, 1999,~~ July 1, 2003, ~~limiting the duration of liens created by the filing of tax warrants by the Oklahoma Tax Commission to a period of 10 years from the date of its filing.~~ and the limitation of a one time filing by the Oklahoma Tax Commission has now been removed. Consequently, as long as the Oklahoma Tax Commission refiles the tax warrant in the office of the county clerk prior to the expiration of the ten (10) year period created by

the original filing or any proper refiling, the lien shall continue for an additional ten (10) years after the date upon which the warrant was refiled by the county clerk.

~~Caveat Tax Warrants filed prior to October 1, 1979, were required to be filed in the court clerk's Office, and on or after that date in the county clerk's Office.~~

Examples: The Oklahoma Tax Commission ("OTC") filed a tax warrant on October 30, 1989. The lien created thereby is valid until only November 1, 2001 (because the tax warrant was filed prior to November 1, 1989), unless it is refiled prior to November 1, 2001.

The OTC filed a tax warrant on November 2, 1989. The lien created thereby is valid only until November 2, 1999, unless it is refiled prior to November 2, 1999.

The OTC filed a tax warrant on January 2, 1992. The lien created thereby is valid only until January 2, 2002, unless it is refiled prior to January 2, 2002.

Proposal No. 5

The Committee proposes to change Standard 29.2.1 to add a caveat to alert examiners to the holding in Davis v. Mayberry, 2010, OK CIV APP 94 in situations where there are tax deeds affecting restricted members of the Five Civilized Tribes.

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.

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. Section 62(d). Also see the following unpublished case: Johnson v. August, 2005 OK CIV APP 97.

Caveat: See Davis V. Mayberry, 2010 OK CIV APP 94, which applies to tax deeds affecting restricted members of the Five Civilized Tribes.

Proposal No. 6

The Committee recommends that Standard 29.6 be amended to provide what needs to be shown in the abstract concerning certain court proceedings to make the standard consistent with the provisions of the Simplification of Land Titles Act.

29.6. Abstracting

Abstracting relating to court proceedings under the Simplification of Land Titles Act, 16 O.S. § 62(b), (c) & (d), when the instruments have been entered or recorded for ten (10) years or more, as provided in the statute, shall be considered sufficient when there is shown the following in the abstract:

A .In sales by guardians or personal representatives, the deed and order confirming the sale.

B. In probate and partition proceedings in district court, the final decree and estate tax clearance unless not required by 58 O.S. § 912 or 68 O.S. § 815(d) or unless the estate tax lien is barred.

C. In general jurisdiction court sales under execution~~, the petition and other instruments, if any, showing defendants sued, the service upon defendants or their entry of appearance,~~ the judgment, the deed~~, and~~ the court order directing the delivery thereof and proof of service of the notice of the pendency of such action on the Superintendent of the Five Civilized Tribes~~ or the Regional Director of the Eastern Oklahoma Region, Bureau of Indian Affairs,~~ now Area Director of the Five Civilized Tribes and Election Not to Remove, if any.

D. In general jurisdiction court partitions, or adjudications of ownership, ~~the petition and other instruments, if any, showing defendants sued, the service upon defendants or their entry of appearance,~~ the final judgment, any deed of partition, ~~and~~ any court order directing the delivery thereof and proof of service of the notice of the pendency of such action on the Superintendent of the Five Civilized Tribes~~ or the Regional Director of the Eastern Oklahoma Region, Bureau of Indian Affairs,~~ now Area Director of the Five Civilized Tribes and Election Not to Remove, if any.

E. Any pleading in which an attorney's lien is claimed by the attorney for a party that is awarded an interest in the property.

The Abstractor can make in substance the following notation: "other proceedings herein omitted by reason of 16 O.S.A. § 61 et seq.,and Title Examination Standards Chapter 29.

Proposal No. 7

The Committee recommends replacing Standard 30.14 to reflect what an examiner needs to have included in the abstract to be able to accurately render an accurate opinion on the status of title.

30.14. Federal Court Proceedings

~~The absence of certification as to federal district court and bankruptcy court matters should not be deemed a deficiency in the title evidence for the real property under examination.~~
~~Authority: 28 U.S.C.A. § 1964; 28 U.S.C.A. § 1962; 28 U.S.C.A. § 3201.~~

~~Comment:~~ ~~Title 28 U.S.C.A. § 1964 requires lis pendens notice as to federal district court actions to be filed in same manner as required by state law, (i.e., with the county clerk where the real property is located) 12 O.S. § 2004,2 (A)(1). Title 28 U.S.C.A. §§ 1962 and 3201 requires any judgment of a federal district court to be filed in the same manner as required by state law to create a lien on real property, (i.e., with the county clerk where the real property is located), 12 O.S. §706; See also 68 O.S. § 3401 et seq.~~

~~Caveat:~~ ~~The automatic stay of a federal bankruptcy proceeding is not subject to the requirements of Title 28 U.S.C.A. § 1964. The automatic stay is generally effective without filing notice and regardless of where the bankruptcy is filed, 11 U.S.C.A. § 362(a); See Chapter 34, infra, regarding bankruptcy proceedings~~.

A. Pre-1958: For lands under examination which are located in any of the counties located in the multicounty jurisdiction of a federal district court, there must be a federal district court certificate covering from inception of title (i.e., Sovereignty) to August 19, 1958.

B. 1958-1977: For lands under examination which are located in the same county where the federal district court is located, there must be a federal district court certificate covering from August 20, 1958 to September 30, 1977.

C. Post-1977: For any lands under examination, there is no need for a separate federal district court certification for the period after September 30, 1977.

Comment: Although the 30-year Marketable Record Title Act (16 O.S. §§ 71 to 79) may eliminate the impact of some of the matters in the federal district court arising in the earlier period of time (i.e., pre-1977), the express exceptions to the extinguishing effect of the MRTA (e.g., “easements,” and “any right, title or interest of the United States”) cause such matters (such as judgments) to continue to impact the title in the present.

Authority: 12 O.S. §2004.2: (A); 16 O.S. §76(A); 28 U.S.C.A. §1964;

Guaranty State Bank of Okmulgee v. Pratt, **1919 OK 120**, 180 P. 376; Orton v. Citizens State Bank, 1929 OK 332, 291 P.15; Bowman v. Bowman, 1949 OK 70, 206 P.2d 582; Hart v. Pharoh, 1961 OK 45, 359 P.2d 1074; Mobbs v. City of Lehigh, 1982 OK 149, 655 P.2d 547; McClaskey v. Barr, 48 F. 130, 7 Ohio F. Dec. 55, (November 10, 1891); Stewart v. Wheeling & Lake Erie Ry., 53 Ohio St. 151, 41 N.E. 247 (1895); City of Mankato v. Barber Asphalt Paving Co., 142 F. 329 (Eighth Cir. 1905); United States v. Calcasieu Timber Co., 236 F. 196 (5th Cir. 1916); Wilkin v. Shell Oil Company, 197 F. 2d 42 (10 Cir. 1951); Tilton v. Cofield, 93 U.S. 163 (1876); Erie R.R. v. Thompkins, 304 U.S. 64 (1938); Astle, Dale L., 32 Oklahoma Law Review 812 (1979), "An Analysis of the Evolution of Oklahoma Real Property Law Relating to Lis Pendens and Judgment Liens."

Proposal No. 8

The Committee recommends a change in Standard 35.3 C to clarify that the plan referred to in the standard is a joint city-county plan as is provided for in the governing statute.

35.3 C. Endorsement upon Deeds of Lot Split Approval (Minor Subdivisions) by Zoning and Land Use Regulating Body.

C. Within a county in which there is no city or incorporated town having a population more than 200,000 and in which a ~~municipality~~ city or incorporated town and the county ~~has~~ have adopted a comprehensive plan as authorized by 19 O.S. § 866.1 *et seq.*, any deed of a tract within the jurisdictional territory of the cognizant planning agency, recorded after the adoption of such city-county plan, ~~of a tract within the jurisdictional territory of the cognizant planning agency~~, which deed:

1. conveys a tract of less than one entire platted lot, or

2. conveys an unplatted tract described by federal survey or metes and bounds, consisting of ten (10) acres or less, shall not be considered valid unless filed for record before January 1, 1963, or unless

a. the deed bears a certificate of approval for lot split purposes by the cognizant planning agency, or

b. the legal description contained in the deed was previously approved by the cognizant planning agency and endorsed upon the first deed of record creating such lot split, or upon a certified copy thereof, or

c. the legal description contained in the deed was the subject of a prior deed, which prior deed was filed for record before the date of

the adoption of such comprehensive plan, or

d. the tract is situated within a municipality in such county which had not adopted a comprehensive plan at the time the first deed creating the lot split was filed for record, or

e. the tract consists of more than two and one-half acres, such county is adjacent to a county which has adopted a master plan as authorized by 19 O.S. § 863.1 *et seq.,* and the cognizant planning agency has adopted its order or rule implementing the 1968 amendment to 19 O.S. § 866.13, providing for lot split approval of conveyances of tracts of two and one-half acres or less, if the deed was filed before April 8, 1992, or

f. the deed has been of record for at least five years, or

g. the legal description contained in the deed constitutes a "remainder tract" consisting of the balance of (i) a platted lot, or (ii) an unplatted tract previously held under common ownership with the original severed portion of such unplatted tract as hereinafter described, and

(1) a deed appearing of record describing the original severed portion of such lot or tract either

(a) bears a certificate of approval for lot split purposes by the cognizant planning agency or

(b) has been of record for at least five years or

(2) the original severed portion of such lot or tract was taken or created in fee by dedication, conveyance or condemnation as a public way.

D. LATEST TES COMMITTEE AGENDA

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

"FOR THE PURPOSE OF EDUCATING AND GUIDING TITLE EXAMINATION ATTORNEYS"

2013 MARCH AGENDA

(As of Mar. 8, 2013)

[NOTE: SEE MEETING DATES AND LOCATIONS AT THE END]

MAR 16/OKC

Speakers (Sub-Comm.)	Standard#	Status	Description

BUSINESS/GENERAL DISCUSSION OF CURRENT EVENTS

9:30 a.m. – 10:00 a.m.

Hot Topics: General Questions from Attorneys and Other Title Industry Members (Epperson)

Approval of Previous Month's TES Committee Minutes (Munson)

Soper	**NA**	**Mar Report**	***LEGISLATIVE UPDATE*** ***Brief presentation concerning proposed or pending legislation affecting real property titles (including Dynasty Trusts/Rule Against Perpetuities).***

Wittrock **Epperson**	**NA**	**Mar Report**	***STANDING*** ***We will be discussing a new --2013-- Oklahoma Supreme Court Case on Standing (#16)(see table containing list of "Standing" cases at www.eppersonlaw.com)***

PRESENTATIONS

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

10:00 a.m. – 10:45 a.m.

10:45-11:00 a.m. BREAK********

PRESENTATIONS (CONT'D)

11:00 a.m. – 12:00

Wimbish	**7.2**	**Mar Draft**	***MARITAL INTERESTS AND MARKETABLE TITLE*** ***The cite needs to be corrected for Thomas (to 1921 OK 414, 202 P. 499), and we should consider adding Hawkins v. Corbit, 1921 OK 345, 201 P. 649, as additional authority.***

Astle **Noble** **Elliott** **Keen**	**6.7**	**Mar Draft**	***DURABLE POWER OF ATTORNEY*** ***The question has arisen as to whether the existing standard should be revised to show that a durable power of attorney terminates automatically upon appointment of a guardian?***

Reid **Sullivan** **Keen** **Astle** **Schomp**	**4.1**	**Mar Draft**	***OUT OF STATE TITLE MATTERS*** ***(1) GUARDIANSHIP*** ***The issue has arisen concerning whether a guardian appointed by a court in another state can convey or encumber real property in Oklahoma without the supervision and involvement of an Oklahoma court?*** ***AND*** ***(2) DIVORCE DECREES*** ***Can a non-Oklahoma divorce court distribute Oklahoma real property?*** ***AND*** ***(3) PROBATE*** ***AND*** ***(4) DURABLE POWER OF ATTORNEY***

Astle **Wimbish**	**???**	**Mar Report**	***QUIET TITLE AS TO ALLOTEE*** ***The question has been raised (by Steve Schuller) as to***

Keen			***whether 84 Section 257 can be used to determine heirs for non-restricted Indian chains of title?***

********** END OF PRESENTATIONS **********

APR 20/STROUD

Evans & Tinney Kempf	**3.2**	**Apr Draft**	***MINERAL AFFIDAVITS AND RECITALS*** ***The Standard provides that affidavits and recitals "cannot substitute for a conveyance or probate of a will."(except in circumstances covered in 16 O.S. Section 83 and other statutes). 16 O.S. Section 67 provides that an affidavit filed of record for 10 years, without challenge, establishes marketable title as to severed minerals, in lieu of a probate. These inconsistencies need to be addressed.***

Doyle Keen Astle	**34.2 (E)(2)(c)**	**Apr Report**	***ADEQUACY OF NOTICE OF BKCY MOTION TO AVOID LIEN TO JUDGMENT CREDITOR'S PRIOR ATTORNEY*** ***The question has arisen as to whether a title examiner should make a requirement due to inadequate notice where the only notice of a bankruptcy Motion to Avoid Judgment Lien is delivered to the judgment creditors' prior attorney in the underlying case giving rise to the lien?***

(Astle??)	**???**	**Apr Report**	***SERVICE MEMBERS CIVIL RELIEF ACT*** ***Due to recent changes in this Act, it appears that the related Standards need to be reconsidered.***

Astle	**24.14**	**Apr Report**	***INCOMPLETE FORECLOSURE*** ***The question has arisen on how to handle attorney liens when there is an incomplete foreclosure, such as when the attorney's lien is claimed but the case is dismissed due to a deed in lieu of foreclosure?***

(Epperson?)	**30.14**	**Apr Report**	***FEDERAL BANKRUPTCY COURT PROCEEDINGS*** ***In 2012 the Committee repealed 30.14 covering both Federal District Court and Bankruptcy Proceedings, and replaced it with a revised Standard covering only Federal District Court matters, but not Bankruptcy matters. We need to adopt a new Standard covering***

			bankruptcy matters.

_____MAY 18/TULSA_____

<u>Munson&</u> <u>McEachin&</u> <u>Reid</u> Epperson	**30.9 & 30.10**	**May Report**	***MRTA/Deed as Root: All Right, Title and Interest; & Co-Tenancy Termination*** ***(1) What quantity of title is included in either a warranty or quit claim deed, using this language: "All grantor's right, title and interest" or "All my right, title and interest"? What impact, if any, does such language have on that instrument acting as a "root of title" under the MRTA? See Reed v. Whitney, 1945 OK 354 (warranty limited to interest actually owned) . If such a deed can be a root for the interest conveyed, how far back does the examiner need to go to ascertain what interest the grantor owns and thereby conveys? Should this Standard on the MRTA have a comment added, explaining this issue?*** ***AND*** ***(2) One of the comments to this standard refers to the possibility of there being two roots of title creating two marketable record titles, with each being subject to the other. The sample fact pattern is (1) decree of Blackacre to wife and two sons with decree filed 35 years ago, and (2) wife deeds Blackacre (without specifying a quantum of interest) to one of two sons, with deed filed 31 years ago. Since wife's deed is more than 30 years old, does the MRTA establish title in the grantee son, and extinguish the omitted son's claim? (See Bennett v. Whitehouse)***

<u>Munson</u> McEachin Epperson	**30.1 et seq**	**May Report**	***MRTA/Severed Minerals*** ***Due to the holding in the Rocket case, can it be concluded that the MRTA does affect severed mineral chains of title? (see Epperson's published article on the issue at www.eppersonlaw.com)***

<u>Epperson</u>	**NEW**	**May 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?

_____***JUNE 15/STROUD***_____

McEachin	**24.12 & 24.13**	**June Report**	***MERS*** ***This issue has become a national topic and ongoing out of state cases will be monitored and reported on.***

Noble **Astle** **Keen** **Epperson**	**17.4**	**June Report**	***"TRANSFER ON DEATH" DEED*** ***Further clarifications are needed for the existing Standard due to 2013 anticipated statutory amendments.***

_____***JULY 20/OKC***_____

_____***AUG 17/STROUD***_____

_____***SEP21/TULSA***_____

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

==========TABLED TO 2014==========

==========TABLED INDEFINITELY==========

COMMITTEE OFFICERS:

Chair: Kraettli Q. Epperson, OKC (405) 848-9100 fax: (405) 848-9101
kqe@meehoge.com

Comm. Sec'y: Luke Munson, OKC (405) 513-7707
lmunson@munsonfirm.com

2013 Title Examination Standards Committee

(Third Saturday: January through September)

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

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

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

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

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

APPENDICES

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

2. NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER REPORT

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

APPENDIX 1

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

2012 Title Examination Standards Committee

	Name	City	Office
	Kraettli Q. Epperson	Oklahoma City	Chair
	Luke Munson	Oklahoma City	Secretary
1.	Dale L. Astle	Tulsa	
2.	Scott Byrd	Tulsa	
3.	Barbara L. Carson	Tulsa	
4.	Alice Costello	Edmond	
5.	William Doyle	Tulsa	
6.	Alan Durbin	Oklahoma City	
7.	Kraettli Q. Epperson	Oklahoma City	
8.	Larry Evans	Tulsa	
9.	Melvin Gilbertson	Sapulpa	
10.	Alex Haley	Oklahoma City	
11.	Gary Heinen	Oklahoma City	
12.	J. Fred Kempf	Oklahoma City	
13.	Scott McEachin	Tulsa	
14.	Luke Munson	Oklahoma City	
15.	Jeff Noble	Oklahoma City	
16.	D. Faith Orlowski	Tulsa	
17.	O. Saul Reid	Oklahoma City	
18.	Henry P. Rheinburger	Oklahoma City	
19.	Bonnie Schomp	Seminole	
20.	Chris Smith	Edmond	
21.	Lisa Stanton	Tulsa	
22.	Jason Soper	Oklahoma City	
23.	Scott Sullivan	Oklahoma City	
24.	Mike Tinney	Oklahoma City	
25.	Charis L. Ward	Oklahoma City	
26.	Robert White	Oklahoma City	
27.	Monica Wittrock	Oklahoma City	
28.	John B. Wimbish	Tulsa	

APPENDIX 2

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER

(Effective July 20, 2012)

STATUS REPORT

State		Last Revised		Standards		
		Pre-2007	2007+	#Ch.	#Stands.	#Pgs.
1.	Arkansas	-	12-07-09	22	110	65
2.	Colorado	-	05-00-12	15	135	72
3.	Connecticut	-	01-12-09	30	151	471
4.	Florida	-	06-00-12	21	143	187
5.	Georgia	08-18-05	-	39	194	144
6.	Idaho	c. 1946	-	-	-	-
7.	Illinois	01-00-77	-	14	26	35
8.	Iowa	-	06-00-10	16	105	90
9.	Kansas	00-00-05	-	23	71	122
10.	Louisiana	00-00-01	-	25	233	99
11.	Maine	-	05-17-11	09	72	90
12.	Massachusetts	-	05-05-08	N/A	74	103
13.	Michigan	-	05-00-07	29	430	484
14.	Minnesota	-	11-05-11	N/A	98	86
15.	Mississippi	10-00-40	-	-	-	-
16.	Missouri	05-15-80	-	N/A	26	17
17.	Montana	c. 1955	-	N/A	76	78
18.	Nebraska	-	01-30-09	16	96	99
19.	New Hampshire	-	12-31-11	13	182	38
20.	New Mexico	00-00-50	-	06	23	05
21.	New York	01-30-76	-	N/A	68	16
22.	North Dakota	-	00-00-10	18	191	231
23.	Ohio	-	05-13-09	N/A	53	45
24.	Oklahoma	-	11-04-11	33	120	117
25.	Rhode Island	-	04-28-09	14	78	78
26.	South Dakota	06-21-03	-	N/A	66	58
27.	Texas	-	06-24-11	16	90	80
28.	Utah	06-18-64	-	N/A	59	13
29.	Vermont	-	10-00-10	28	43	61
30.	Washington	09-25-42	-	N/A	29	09
31.	Wisconsin	02-00-46	-	N/A	15	08
32.	Wyoming	07-01-80	-	22	81	99
Total		**15**	**17**			

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

APPENDIX 3

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

262. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2011-2012", Tulsa Title and Probate Lawyers Association—Monthly Lunch Program, Tulsa, Oklahoma (February 14, 2013)

256. **"The Need for a Federal District Court Certificate in All Title Examinations: A Reconsideration", 83 OBJ 2367 (November 3, 2012)**

255. "Oklahoma Real Property Partition: Procedure and Forms", The Oklahoma Bar Association Real Property Law Section, Oklahoma City, Oklahoma (October 25, 2012), and Tulsa, Oklahoma (October 26, 2012)

254. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2010-2011", Oklahoma Bar Association Real Property Law Section Cleverdon Round Table, Tulsa, Oklahoma (May 4, 2012), and Oklahoma City, Oklahoma (May 11, 2012)

248. **"The Real Estate Mortgage Follows the Promissory Note Automatically Without an Assignment: The Lesson of BAC Home Loans", 82 OBJ 2938 (December 10, 2011)**

244. "Nontestamentary Transfer of Property Act: An Update on Oklahoma's Use of the Transfer-on-Death Deed (2011)", 2011 Boiling Springs Legal Institute, Boiling Springs Park, Woodward, Oklahoma (September 20, 2011)

240. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2009-2010", The 2011 Cleverdon Roundtable Seminar, Tulsa, Oklahoma (May 6, 2011), and Oklahoma City, Oklahoma (May 13, 2011)

239. **"Oklahoma's Marketable Record Title Act: An Argument for its Application to Chains of Title to Severed Minerals after *Rocket Oil and Gas Co. v. Donabar*", 82 The Oklahoma Bar Journal 622 (March 12, 2011)**

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

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