UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY: STATUTES, REGULATIONS, CASES, ATTORNEY GENERAL OPINIONS & TITLE EXAMINATION STANDARDS: REVISIONS FOR 2013-2014

(Covering July 1, 2013 to June 30, 2014)

BY:

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

SELECTED PUBLICATIONS:

"Marketable Record Title: A Deed Which Conveys Only the Grantor's 'Right, Title and Interest' Can Be A 'Root of Title'",85 OBJ 1104 (May 17, 2014)

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

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

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I. INTRODUCTION

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

The following materials reflect a listing of selected changes in the law of Oklahoma related to real property title issues, arising over the 12 months following June 30, 2013, 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)

2013-2014 LEGISLATIVE TERM
PENDING BILLS AND LAWS THAT MAY EFFECT
REAL PROPERTY & TITLE EXAMINATION STANDARDS
AMENDED & UPDATED FOR JUNE 21, 2014MEETING

NEW LAWS ESTABLISHED IN THE 2014 LEGISLATIVE SESSION

HB 2620 Cities and Towns - Creating the Protect Property Rights Act.
Sponsor: Representative Martin & Senators Treat & Newberry

Status: Signed into law by the Governor on May 23, 2014

A new law that prohibits statewide registration of real property and prohibits a municipality from assessing or charging fees to own, register, lease, rent or transfer real property.

HB 2790 Probate: Amending Okla. Stat. tit. 58 §§ 245 & 246.
Sponsor: Representative McCullough

Status: Signed into law by the Governor on April 25, 2014.

Bill amends existing law to set the hearing date for a final hearing for a period of time not less than 45 days, instead of the current statute requiring the hearing be set 45 days from the order admitting the petition.

SB 1077 Attorney's Lien: Amending Okla. Stat. tit. 5 § 6
Sponsor: Senator Crain and Representative Grau

Status: Signed into law by the Governor on May 9, 2014.

Bill amends the current statute to establish a formal procedure for attorneys to claim attorney's liens on real property. In order to claim an attorney's lien on real property, the attorney must file a Notice of Attorney's Lien with the County Clerk where the real property is located. Measure sets forth minimum requirements of Notice. Further, the Notice of Attorney's Lien must be filed within one year. An action to enforce Attorney's Lien must be brought within 10 years of recording of Notice of Attorney's Lien.

SB 1448 Vital Statistics: Amending Okla. Stat. tit. 63 § 1-323
Sponsor: Senator Holt and Representative Hall

Status: Signed into law by the Governor on April 30, 2014

Bill amends the current statue to state that death certificates shall be considered publicly available records 75 years after a person's death and birth certificates shall be made publicly available 125 years after a person's birth.

SB 1904 Family Wealth Preservation Trust Act: Amending Okla. Stat. tit. 31 § 11
Sponsor: Senators Sykes and Ivester and Representative Randy McDaniel

Status: Signed into law by the Governor on April 21, 2014

Law has been amended to remove the $1,000,000.00 cap of exempt property thereby making the entire corpus of a Family Wealth Preservation Trust exempt from attachment or execution except for the payment of child support.

VETOED HOUSE BILLS INTRODUCED IN THE 2013-2014 SESSION

HB 3359 Liens: New law creating the Oklahoma Construction Registry Act.
Sponsor: Representative Echols.

Status: On March 11, 2014 the measure passed the House by a vote of 92-0. The Senate passed an amended version of the measure by a vote of 40-3 on April 23, 2014. With additional amendments, the House passed the amended version of the measure on May 23, 2014 by a vote of 63-4. The Senate passed said amended version on May 23, 2014 by a vote of 30-7. The Governor vetoed the measure on May 4, 2014.

The measure would have allowed for mechanic and materialmen's liens to be perfected in and to real property on which labor preformed and/or material utilized in absent of full payment by posting a verified statement of account to the yet to be constructed "construction registry website." Said posting must occur within fifteen (15) days after the contractor or subcontractor has provided labor or materials for the lien to be valid. An action to enforce a valid lien must be brought within two (2) years from the date on which the last of the material was furnished or the last of the labor was performed.

DORMANT BILLS IN THE 2014 SESSION

HB1884	Insurance: New law to be codified as Okla. Stat. tit. 36 § 5021.
HB 2687	Right-of-way: Amending Okla. Stat. tit. 18 § 601.
HB 2699	Nonprofit entities: New law creating the Oklahoma Nonprofit Entity Act of 2014.
HB 2736	Conveyances: Amending Okla. Stat. tit. 16 § 4.
HB 2752	Abstractors and Title Agents: New law creating the Abstractor and Title Agent Testing Act.
HB 2754	Title Agents: New law creating the Title Agent Reform Act.
HB 2800	Probate: New law creating the Probate Procedure Act of 2014.
HB 2801	Guardianship: New law creating the Guardianship Act of 2014.
HB 2807	Property: New law creating the Oklahoma Community Protection Act.
HB 2860	Wills and Succession: Amending Okla. Stat. tit. 84 § 257
HB 2935	Liens: New law creating the Oklahoma Municipal Lien Act of 2014.
HB 2950	Liens: New law creating the Oklahoma Lien Law of 2014.
HB 3241	Cities and Towns: New law providing procedures to abate public nuisances.
HB 3318	Attorneys: New law creating the Oklahoma Attorney Act of 2014.
HB 3324	Corporations: New law creating the Corporations Act of 2014.
HB 3325	Trusts: New law creating the Oklahoma Trust Act of 2014.
HB 3362	Liens: Amending Okla. Stat. tit. 42 § 142.6.
HB 3377	Religious-Based Entities: New law creating the Oklahoma Religious-Based Entity Act.
SB 355	Guardianship: Amending Okla. Stat. tit. 30 §§ 1-123 & 4-307
SB 1161	Conveyances: Amending Okla. Stat. tit. 16 § 4.
SB 1330	Probate Procedure: Amending Okla. Stat. tit. 58 § 246(D).
SB 1475	Durable Powers of Attorney: Amending Okla. Stat. tit. 16 §§ 1074 and 1075.
SB 1559	Wind Energy: Amending Okla. Stat. tit. 17 §§ 160.12-160.16 & 160.18.
SB 1649	Property: New law limiting residential restrictive covenants.
SB 1906	Religious-Based Entities: New law creating the Oklahoma Religious-Based Entity Act.
SB 1919	Judgments: Amending Okla. Stat. tit. 16 § 706.

If you know of any other matters that you believe should be added to this report, please do not hesitate to contact Jason Soper at 405.552.7721 or via email at jsoper@firstam.com or Charis Ward at 405.552.7711 or via email at chward@firstam.com.

III. REGULATORY CHANGES

(NONE)

IV. CASE LAW

OKLAHOMA CIVIL CASES

(JULY 1, 2013-JUNE 30, 2014)

LIST OF CASES

NO.	TOPIC	CASE	OKLAHOMA CITATION	DECIDED	MANDATE
A. OKLAHOMA COURT OF CIVIL APPEALS					
1	Attorney Fees Under Condition Disclosure Act	Fentem v. Knox	2013 OK CIV APP 50	4/19/2013	6/11/2013
2	HOA Special Assessment for Public Street Repair	Cedar Creek I, Improvement Ass'n v. Smith	2013 OK CIV APP 74	6/19/2013	7/30/2013
3	Assets Exempt from Execution	Bowles v. Goss	2013 OK CIV APP 76	7/16/2013	8/20/2013
4	Attorney Fees to Enforce HOA Restriction	Whitehall Homeowners Assoc., Inc. v. Appletree Enterprise, Inc.	2013 OK CIV APP 77	7/2/2013	8/20/2013
5	Impact on Title If Foreclosure Judgment Is Reversed on Appeal	Cimarron River Ranch, LLC v. Newman	2013 OK CIV APP 79	7/25/2013	9/6/2013
6	Judgment Lien on After Acquired Real Property after Bankruptcy Discharge	Grasz v. Discover Bank	2013 OK CIV APP 113	9/6/2013	12/13/2013
7	Foreign Will Omitting Heirs	In the Matter of the Estate of Boyd	2014 OK CIV APP 20	1/31/2014	2/25/2014

8	Mortgage Foreclosure Summary Judgment, & Assignment of Choses in Action	First Pryority Bank v. Moon	2014 OK CIV APP 21	9/27/2013	2/25/2014
9	Severing Joint Tenancy	Kail v. Knudeson	2014 OK CIV APP 28	2/21/2014	3/26/2014
10	Will Interpretation	In the Matter of the Estate of Horner	2014 OK CIV APP 29	10/25/2013	3/26/2014
11	Condemnation Valuation	Independent School Dist. No. 5 of Tulsa County v. Taylor	2014 OK CIV APP 40	11/27/2013	4/29/2014

A. OKLAHOMA COURT OF CIVIL APPEALS

1. **FENTEM v. KNOX (2013 OK CIV APP 50)**

TOPIC: Attorney Fees Under Condition Disclosure Act

RULING: Dismissal by plaintiff Homeowners/buyers removes Court's jurisdiction to award attorney fees to Sellers.

FACTS: Homeowners/buyers sued Sellers for misrepresentation for failure to disclose mold. Homeowner's action was dismissed by the Court (without prejudice) due to Homeowner's failure to serve summons. Homeowners refilled case and Sellers filed Motion for Summary Judgment based on statute of repose (60 O.S. § 831 et. seq). Homeowners dismissed case before the trial Court ruled on the pending Motion. Sellers sought attorneys fees and costs, arguing they were the prevailing party under 60 O.S. § 837(D), Residential Property Condition Disclosure Act. In the alternative, the Sellers said they were entitled to attorney fees under the equitable powers of the Court, and due to the Homeowner's oppressive behavior pursuing a frivolous claim.

TRIAL COURT RULING: Without a hearing on the Sellers' attorney fees application, the trial cost awarded attorneys fees to Sellers.

COURT OF CIVIL APPEALS RULING: Reversed. In the absence of an affirmative ruling on the Sellers' Motion for Summary Judgment on the merits, the Sellers are not entitled to attorney fees since they were not a prevailing party. Also an award of attorney fees using the equitable powers of the Court is not justified herein because: (1) absence of notice and a hearing, (2) absence of findings of bad

faith, and (3) absence of any evidence of egregiousness, vexatiousness, or oppressiveness of Homeowner's litigation conduct.

2. **CEDAR CREEK I, IMPROVEMENT ASSOCIATION v. SMITH (2013 OK CIV APP 74)**

TOPIC: HOA Special Assessment for Public Street Repair.

RULING: Restriction and bylaws did not authorize special assessment to repair public platted streets

FACTS: HOA was formed with restrictions and bylaws. Purpose of Association. was for "general plantings within the road way areas," and for "all common community services of every kind and nature." Only the Property owners were expressly authorized to sue to enforce the restrictions. Annual dues of $250.00 per year were allowed, with a majority vote needed for an increase. The platted subdivision was not in a city, but there was a dedication of the streets to the county. The streets became in need of repair, but the county failed to do the repairs. No demand was made on the county to do the repairs. At an annual meeting a majority of Association members voted for a one-time special assessment of $2000.00 per lot to repair the streets. One lot owner refused to pay either his annual dues or the special assessment. The Association sued the lot owner in small claims court to enforce the assessment.

TRIAL COURT RULING: Judgment for Association on the unpaid annual dues, including 10% for attorney fees, as allowed by the small claims statute. Judgment for the lot owner denying the enforcement of the special assessment.

COURT OF CIVIL APPEALS RULING: Affirmed the debt for the unpaid annual dues and affirmed the limitation to 10% attorney fees, as allowed by the small claims statutes, since the bylaws and restrictions neither authorized the Association to

enforce the restrictions, nor to collect attorney fees for such collection. Affirmed the ruling against the special assessment, because (1) restrictions and bylaws did not authorize the repair of public streets, and (2) did not allow any special assessments. In addition, the Association failed to demand that the county repair the public streets.

3. **BOWLES v. GOSS (2013 OK CIV APP 76)**

TOPIC: Assets Exempt from Execution.

RULING: A money judgment lien does attach to the debtor's homestead, and an injunction against conveying one's assets is proper.

FACTS: Debtor owed over $700,000 in a judgment for fraud. Debtor failed in an attempt to have the debt discharged in bankruptcy, because the debt arose due to fraud. The debtor took out a $140,000 reverse mortgage on his homestead and gave most of the borrowed money to his grandsons as gifts, leaving $31,000 unused but available under the mortgage. The creditor sought to impose a post-judgment lien on the homestead, to order the debtor to access the remaining funds to apply on the debt, and an injunction against conveying or encumbering all of his assets, including some mineral interests.

TRIAL COURT RULING: Creditor given lien on the homestead (but it was not immediately enforceable by execution), creditor was not forced to withdraw the remaining $31,000 in loan funds, debtor was ordered to give any funds if withdrawn to the creditor, and the debtor was enjoined from conveying or encumbering any of his assets.

COURT OF CIVIL APPEALS RULING Affirmed, except the debtor was allowed to seek court approval if a planned withdrawal of funds under the loan was to be used to purchase homestead real property or other property exempt from execution.

4. **WHITEHALL HOMEOWNDERS ASSOC., INC. v. APPLETREE ENTERPRISE, INC. (2013 OK CIV APP 77)**

TOPIC: Attorney Fees to Enforce HOA Restriction

RULING: HOA is a "person" allowed to recover attorney's fees.

FACTS: Homeowner installed shingles which did not satisfy the restrictions as to the propert type and color, and did not have prior HOA approval. HOA sued to enforce restrictions to require the homeowner to replace the improper shingles and for attorney's fees.

TRIAL COURT RULING: Injunction granted from removal and replacement of shingles. Also, the HOA was given attorney's fees as the prevailing party.

COURT OF CIVIL APPEALS RULING: Homeowner appealed only the award of attorney's fees. Court ruled HOA was a "person" under the Real Estate Development Act which authorizes the award of attorney fees, and, therefore, the HOA was entitled to attorney's fees as the prevailing party.

[EDITOR'S NOTE: The Act authorizes "Any person owning property in a real estate development" to enforce the restrictions. No evidence is discussed showing that the HOA owned such property.]

5. **CIMARRON RIVER RANCH, L.L.C. v. NEWMAN (2013 OK CIV APP 79)**

TOPIC: Impact on Title if Foreclosure is Reversed on Appeal

RULING: Reversal of Foreclosure Judgment After Sale Leaves Title in Purchaser

FACTS: Commissioners of Land Office (COLA) sued lease holder for failure to make payments. Judgment granted to COLA who sold lands of the debtor to a third party. Debtor appealed, but failed to file supersedeas bond, to halt execution sale. Debtor gave a mortgage on the subject land to third party (debtor's parents). When judgment was reversed and remanded to trial court, debtor filed separate suit to quiet title and for trespass.

TRIAL COURT RULING: Judgment for new owner who bought the land under the foreclosure sale, quieting title in new owner and dismissing trespass claim.

COURT OF CIVIL APPEALS RULING: Judgment affirmed. Remedy for debtor is for monetary restitution from the creditor in the foreclosure case. The title in new owner is not subject to challenge, especially when new owner and not debtor is in possession, when no supersedeas bond was posted.

[Editors note: The statute (12 0.S. §774) which protects the title held by a buyer under a foreclosure sale, when the underlying money judgment is reversed, does not protect a buyer if such buyer is the plaintiff and is not a third party. See: Arnold v. Jones, 1915 OK 198]

6. **GRASZ v. DISCOVER BANK (2013 OK CIV APP 113)**

TOPIC: Judgment Lien on After Acquired Real Property After Bankruptcy Discharge

RULING: There is no judgment lien on real property acquired by a debtor after discharge of a personal debt, and the related statement of judgment should have been released upon request.

FACTS: Judgment granted against debtor for $11,000. Creditor filed a statement of judgment. Judgment was discharged in bankruptcy. Real property was acquired by debtor after discharge, from his exempt IRA, where the debtor was the beneficiary. The debtor demanded that the creditor release the statement of judgment and the creditor refused. The Debtor filed an action to release the lien. Court said to ask bankruptcy court to decide. Bankruptcy court said no lien could exist, on after acquired property, when the debt had been discharged. The debtor sued to quiet his title and for slander of title.

TRIAL COURT RULING: Judgment for creditor on quiet title suit, and dismissed the slander of title action.

COURT OF CIVIL APPEALS RULING Judgment on quieting title reversed, and remanded to trial court to grant debtor's request to quiet title in debtor's favor. Creditor could not have a lien on after acquired real property after the debt underlying the statement of judgment had been discharged. Case was remanded to decide the slander of title issue, since the usual privilege protecting a party against a slander of title claim when the assertion of title occurs inside a lawsuit does not protect a creditor from acting contrary to the discharge.

7. **IN THE MATTER OF THE ESTATE OF BOYD (2014 OK CIV APP 20)**

TOPIC: Foreign Will Omitting Heirs.

RULING: Pretermitted heirs under a Texas will and probate decree can claim Oklahoma real property interest

FACTS: Will was probated in Texas, wherein will granted all decedent's property to one of four sons, without referring to the other three sons, Only personal private property was included in the inventory. An order was entered in Texas, showing the one son as the only devisee. When the decedent's omitted mineral interests were discovered in Oklahoma, the son of the sole devisee (now deceased) filed ancillary probate in Oklahoma to confirm his sole ownership of the minerals. The heirs of the other 3 pretermitted sons objected.

TRIAL COURT RULING: Judgment was rendered finding the three pretermitted heirs were due their share of Oklahoma real property. (84 O.S. § 132) The real property (minerals) was divided into fourths and distributed to the four children (or their estates).

COURT OF CIVIL APPEALS RULING: The judgment was affirmed. The Full Faith and Credit Clause of the U.S. Constitution, and the related Oklahoma Statute (84 O.S. § 51) were held to allow and to require that the state laws of the situs of the real property must prevail. Consequently, the Oklahoma pretermitted heir statute required the real property be divided equally among the four heirs.

8. **FIRST PRYORITY BANK v. MOON (2014 OK CIV APP 21)**

TOPIC: Mortgage Foreclosure Summary Judgment, and Assignment of a Choses in action.

RULING: Debtor's failure to respond to motion for summary judgment, and failure to attach sufficient evidentiary materials to an unauthorized amended answer, supported summary judgment; creditor can purchase a debtor's chose in action (contract claims against same creditor) at sheriff's sale, and then dismiss them with prejudice.

FACTS: Debtor defaulted on numerous notes secured by mortgages. Lender filed foreclosure. Debtor answered, but failed to attach any evidentiary materials to the initial answer. Debtor filed amended answer, without leave of court, with same evidentiary materials attached, which evidence proved inadequate to withstand a motion for summary judgment. Debtor's attorney died, and lender waited over three months to file its motion for summary judgment, and debtor failed to respond. Debtor assigned its defenses and counter claims to a third party who then sought to intervene and halt execution sale.

TRIAL COURT RULING: Trial court granted summary judgment on the notes and mortgages and sheriff's sale was held and sale confirmed. Debtor's new attorney filed motion to vacate which was denied. Third party assignee from debtor of debtor's claims was denied request to intervene and to stay execution.

COURT OF CIVIL APPEALS RULING: Judgment affirmed. Debtor's failure to respond to a motion for summary judgment, after notice, is not an irregularity. The evidentiary materials attached to debtor's amended answer (1) could not be

considered, because the amended answer was filed out of time and without leave of court, and (2) the attached materials neither refuted the lender's assertions, nor supported the debtor's defenses and counterclaims. Affirmed right of lender to execute on debtor's causes of action in parallel foreclosures, and to purchase and then dismiss, with prejudice, such claims. Consequently, such trial court judgment fully resolved all issues. Affirmed trial court's denial of request of third party assignee of debtor's defenses and counterclaims to intervene and stay execution, because the debtor had already lost its defenses and counterclaim at an execution sale, so it had nothing to assign.

9. **KAIL v. KNUDESON (2014 OK CIV APP 28)**

TOPIC: Severing Joint Tenancy

RULING: Joint tenancy is Severable, and Actual Knowledge of a Deed starts the 5-year Statute of Limitation.

FACTS: Deed was given conveying land to the grantor's daughter (plaintiff) and a niece (defendant), as joint tenants. The deed was signed in the daughter's (plaintiff's) presence and, after being recorded, it was delivered to the daughter. The niece (eight years later) conveyed her one-half interest in the land to her own daughter, who deeded it (with her husband's joinder) to a trust for the niece (defendant). All these later deeds were recorded. Daughter (plaintiff) sued niece and her trustees to set aside or reform the joint tenancy deed to create a joint tenancy that "cannot be broken."

TRIAL COURT RULING: Judgment for niece and her trustees because, the daughter's suit was filed more than 5 years after she knew of the deed (12 O.S. § 95 (12)). Other rulings included: (1) 5-year statute was not tolled until niece severed the joint tenancy and (2) there was insufficient evidence that the niece influenced aunt to give the niece an interest or that there was fraud.

COURT OF CIVIL APPEALS RULING: Judgment affirmed. The appeals court also held that there was no fraud (2-year limitation) and no inequitable conduct (5-year limitation). Also, any allegation by aunt or daughter of a mistake was their mistaken understanding of the law when they assumed a joint tenancy could not be severed.

10. **IN THE MATTER OF THE ESTATE OF HORNER (2014 OK CIV APP 29)**

TOPIC: Will Interpretation

RULING: Where decedent devised property under a will and then, before he died, he conveyed away the same properties such devise fails.

FACTS: Decedent executed a will when he owned a residence #1 (Broken Arrow) in his name, and owned all the shares of a company (PDI). PDI owned two commercial properties (#1 & #2) in Muskogee. The will directed the sale of all his properties and the distribution of the proceeds to his heirs. In addition a portion of the sales proceeds from the sale of the two commercial properties was to go to decedent's son (Appellant). A handwritten "codicil" repeats part of the will and in addition allows son to live in such residence (Broken Arrow). After the will was signed and before his death, the decedent (1) conveyed away both of the commercial properties, including one to the son without consideration and (2) conveyed all of the PDI stock to a trust. After the will was signed and prior to decedent's death, PDI purchased an unimproved tract in Muskogee County, and decedent purchased a residence in his name in Muskogee. When decedent died probate proceedings started. Decedent's daughter (Appellee) was appointed personal representative. The son had three attorneys in succession, all of whom withdrew.

TRIAL COURT RULING: Son sought partial distribution of assets. Daughter argued there were only one residence available to son. A hearing was held, and the son's fourth attorney had already withdrawn, and the son represented himself. The son was

allowed to elect to reside in Broken Arrow residence, subject to the mortgage to a third party.

COURT OF CIVIL APPEALS RULING: Judgment Affirmed.

11. **INDEPENDENT SCHOOL DIST. NO. 5 OF TULSA COUNTY v. TAYLOR (2014 OK CIV APP 40)**

TOPIC: Condemnation Valuation

RULING: Landowner Can Submit to a Jury Trial on Valuation Additional Evidence of Additional Damage Not Considered by Commissioners

FACTS: Condemnation Commissioners valued a property being condemned at $1.4 million, without considering the value of a billboard located on it. Landowner requested a Supplemented Commissioner Report to indicate the billboard value, which request was denied as untimely. Landowner demanded a jury trial on value. Condemnor moved for limine to be bar any evidence being submitted to the jury on the billboard value evidence, because the commissioners did not consider it. Limine was denied.

TRIAL COURT RULING: Jury awarded $3.1 million after Landowner's appraiser testified to $2.6 million for the land and $1 million for the billboard. Condemnor requested a new trial to be held without the billboard evidence, which motion was granted. Landowner appealed.

COURT OF CIVIL APPEALS RULING: Judgment reversed. There is no law restricting the evidence submitted at the jury trial to being the same evidence considered by the Commissioners. It was noted that the Commissioners' Report is inadmissible at trial. The jury award was ordered to be reinstated.

V. ATTORNEY GENERAL OPINIONS

(NONE)

VI. TITLE EXAMINATION STANDARDS CHANGES

A. EXAMINING ATTORNEY'S RESPONSIBILITIES

1. GENERAL RESPONSIBILITY

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

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

The Attorney General opined (1983 OK AG 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 2014 T.E.S. REPORT WAS SUBMITTED TO THE NOVEMBER 13, 2014 ANNUAL REAL PROPERTY LAW SECTION MEETING AND THE NOVEMBER 14, 2014 OBA HOUSE OF DELEGATES MEETING AND HAS BEEN APPROVED. THESE STANDARDS ARE EFFECTIVE IMMEDIATELY UPON THEIR APPROVAL BY THE HOUSE OF DELEGATES.

2014 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2014, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 14, 2014. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Tulsa on Thursday, November 13, 2014.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 14, 2014. 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 an addition to Comment 1 of Standard No. 7.2 to explain and clarify the reasoning and purpose of the Standard:

7.2 MARITAL INTERESTS AND MARKETABLE TITLE

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

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

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

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

> Comment 1: There is no question that an instrument relating to the homestead is void unless husband and wife subscribe it. *Grenard v. McMahan*, 1968 OK 75, 441 P.2d 950, Atkinson v. Barr, 1967 OK 103, 428 P. 2d 316, but also see *Hill v. Discover Bank*, 2008 OK CIV APP 111, 213 P.3d 835. It is also settled that husband and wife must execute the same instrument, as separately executed instruments will be void. *Thomas v. James*, 1921 OK 414, 202 P. 499 and *Hawkins v. Corbit*, 1921 OK 345, 202, P. 649. It is essential to make the

distinction between a valid conveyance and a conveyance vesting marketable title when consulting this standard. This distinction is important because the impossibility of determining from the record whether or not the land is homestead, requires the examiner, for marketable record title purposes, to (1) assume that all real property is homestead, and (2) consequently, always require joinder of both spouses on all conveyances. Although a deed to non-homestead real property, signed by a title-holding married person without the joinder of their spouse, will be valid as between the parties to the deed, it cannot confer marketable record title.

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

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

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

Proposal No. 2

The committee recommends that Standard 23.4 E be amended to clarify legal basis for the standard:

E. **On of after November 1, 2000.** By filing a statement of judgment ~~that complies with 12 O.S. § 706~~ with the county clerk of the county where the property is located that complies with 12 O.S. 706 pursuant of the applicable provisions of 43 O.S. § 135, 43 O.S. § 137 and 12 O.S. § 759.

~~Authority: 2000 Okla Sess. Law. ch.384 § 6.~~

Proposal No. 3

The Committee recommends an new standard 24.3 to clarify the authority of a Personal Representative of an estate, appointed either by an Oklahoma court or a court of another jurisdiction, to release a mortgage:

24.3 RELEASE BY PERSONAL REPRESENTATIVE.

A mortgage release executed by the personal representative of a decedent's estate is sufficient where the personal representative was appointed in Oklahoma, or in any other state of the United States or the territories thereof, provided a certified copy of the personal representative's letters testamentary or of administration reflecting that the person is the duly qualified and acting personal representative of the mortgagee's estate is filed with the county clerk in the county in which the mortgage is recorded.

Authority: 58 O.S. § 262; 46 O.S. § 14.

Proposal No. 4

The Committee proposes to new Standard No. 17.5 to establish the scope of the effect of a statutory action to determine heirship of a decedent:

17.5 **SCOPE OF DETERMINATION OF HEIRSHIP**

Any proper judicial determination of heirship of a decedent is a valid determination of heirship of all the real property owned by decedent at the time of decedent's death and is not limited to the real property specifically described in such judicial determination. The marketability of any portion of a Decedent's property will not be affected by the fact that a proper judicial determination of heirship fails to describe a particular portion of the real property owned by the decedent at the time of his death.

If there is a proper judicial determination of heirship which does not specifically describe the property under examination, the examiner should take steps to have proof of that determination filed of record against the property being examined.

Authority: 58 O.S. § 692.1; 84 O.S. §§ 251 & 257

Comment: This Standard may be used anytime the fact situation fits within its parameters. While the standard can be taken advantage of in situations involving restricted Indians, its scope is not intended to be limited to fact situations involving restricted Indians.

Comment: One of the situations that the standard is intended to address is where the record reflects a full blood allottee of one of the Five Civilized Tribes dies owning, for example, the NW/4 of a section of real estate which was part of allottee's allotment. The record does not reflect that the restrictions of alienation have been removed from this allotee. The record also reflects that A, purporting to be the sole heir of the allottee, deeds the NW/4 to B, which deed is approved by the appropriate authority. At a later time, B, or his successors in title, subdivide the NW/4 into a platted subdivision. A judicial determination of heirship pursuant to 84 O.S. § 257, et seq. is brought by the then owner of Lot 1, Block 1 of the platted subdivision alleging the allottee died owning real property that was part of the now-platted subdivision and that A was the sole heir of the allottee and became the owner of all the real property owned by allottee at the death of the allottee. Notice of this proceeding must be given to the Regional Director of the Five Civilized Tribes as required by law. A decree is entered in that matter determining that A is the sole heir of the allottee, entitled to take all of the property owned by the Allottee at the time of his death, and quieting the title of Lot 1, Block 1 in the name of the Plaintiff. The finding that A is the sole heir of the allottee is valid as to all property the allottee owned at the time of his death, including the other lots in the platted subdivision. No other determinations of heirship would be required to make title to all of the other lots in the subdivision marketable.

Caveat: The examiner should keep in mind that a recital of heirship contained in a County Court proceeding for the approval of a deed executed by a restricted Indian heir is not considered a "proper determination of heirship" as that term is used in this Standard. See Semple *Oklahoma Indian Land Titles* § 107 and Homer v. Lester, 1923 Okl. 340.

Caveat: The standard does not apply to situations where title to real property is being quieted or otherwise determined by adverse possession or similar legal theories.

Caveat: When dealing with real property situated within in the historical boundaries of the Five Civilized Tribes, the title to which remains in whole or in part in restricted Indian status, the examiner should be aware that federal agencies may not recognize this standard as it relates to the heirship proceedings brought exclusively under the procedures found in 84 O.S. § 257 et seq. for title to real property not specially described in those proceedings.

Proposal No. 5

The Committee recommends that Title Standard 24.14 be amended to add a Paragraph D to outline the required documentation when a deed in lieu of foreclosure is given in settlement of a filed foreclosure action:

24.14 INCOMPLETE MORTGAGE FORECLOSURE.

The title to real property shall be deemed marketable regarding a mortgage foreclosure action in which no sheriff's sale has occurred, if the following appear in the abstract:

A. A properly executed and recorded release of all of the mortgages set out in the foreclosure action, and

B. If a statement of judgment or affidavit of judgment has been filed in the land records of the county clerk in the county in which the real property is located evidencing a judgment lien for a money judgment granted in the foreclosure action, a release of the judgment lien filed in the land records of the county clerk in the county in which the real property is located, and

C. A dismissal, with or without prejudice, of the entire mortgage foreclosure action, filed in the court case, by the plaintiff and any cross-petitioners in the action, or dismissal by court order, or a partial dismissal, with or without prejudice, of the mortgage foreclosure action, filed in the court case, by the plaintiff and any cross-petitioners in the action or partial dismissal by court order, dismissing the action insofar as it relates to or affects the subject real property~~.~~, and

D. If a deed-in-lieu of foreclosure has been recorded, the items listed in A, B and C above, as applicable, and a release of any attorney's lien created pursuant to 5 O.S. § 6.

Authority: 12 O.S. §§ 686 and 706; Anderson v. Barr, 1936 OK 471, 62 P.2d 1242; Bank of the Panhandle v. Irving Hill, 1998 OK CIV APP 140, 965 P.2d 413; Mehojah v. Moore, 1987 OK CIV APP 43, 744 P.2d 222; and White v. Wensauer 1985 OK 26, 702 P.2d 15.

Comment: In instances in which a proper dismissal of the foreclosure action has been filed in the court case, the absence of a release of a notice of lis pendens of such foreclosure action shall not be deemed to be a defect in the marketability of the title. A release of lis pendens is not a substitute for a dismissal of the foreclosure action.

Proposal No. 6

The Committee recommends that Title Standard 35.3 be amended to conform the standard to the governing statute.

35.3 ENDORSEMENT UPON DEEDS OF LOT SPLIT APPROVAL (MINOR SUBDIVISIONS) BY ZONING AND LAND USE REGULATING BODY

Note: The title examiner may not rely upon the abstract to determine the necessity for lot split approval. The title examiner should determine whether the land is within a planning area and, if so, the effective date of the plan.

A. Within cities having a population over 200,000 and which have adopted a master plan as authorized by 11 O.S. § 47-101 *et seq.,* any deed recorded after the adoption of such

plan, which

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 five acres or less does not create marketable title 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 annexation of the tract by such city, or

d. the legal description contained in the deed was the subject of a prior deed which has been of record for at least five years, or

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

f. 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

i. 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

ii. the original severed portion of such lot or tract was taken or created in fee by dedication, conveyance or condemnation as a public way, or for any other public use or public purpose.

Authority: 11 O.S. § 47-101 *et seq.*, see § 47-116; 16 O.S. § 27a.

Comment: Subparagraph f(2) must be disregarded if the examiner has reason to believe a dedication or conveyance as a public way has not been accepted by the grantee.

B. Within a county having within its boundaries more than fifty percent of the incorporated area of a city having a population of 180,000 or more, where such city and county have adopted a master plan as authorized by 19 O.S. § 863.1 *et seq.*, any deed which

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 five acres or less, or

3. on or after November 1, 2006, conveys an unplatted tract, regardless of the size of such tract, which conveyance results in a "remainder tract" of five acres or less, shall not be considered valid 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 June 10, 1963, or

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

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

f. 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

i. 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

ii. the original severed portion of such lot or tract was taken or created in fee by dedication, conveyance or condemnation as a public way, or for any other public use or public purpose.

Authority: 19 O.S. § 863.1 *et seq.*, see § 863.10; 16 O.S. § 27a.

Comment: Subparagraph f(2) must be disregarded if the examiner has reason to believe a dedication or conveyance as a public way has not been accepted by the grantee.

C. ENDORSEMENT UPON DEEDS OF LOT SPLIT APPROVAL (MINOR SUBDIVISIONS) BY ZONING AND LAND USE REGULATING BODY

Within a county in which there is no city or incorporated town having a population more than 200,000 and in which a city or incorporated town and the county 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, 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 (1) a platted lot, or (2) an unplatted tract previously held under common ownership with the original severed portion of such unplatted tract as hereinafter described, and

i. 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

ii. the original severed portion of such lot or tract was taken or created in fee by dedication, conveyance or condemnation as a public way, or for any other public use or public purpose.

Authority: 19 O.S. § 866.1 *et seq.*, see § 866.13; 16 O.S. § 27a.

Comment: Subparagraph g(2) must be disregarded if the examiner has reason to believe a dedication or conveyance as a public way has not been accepted by the grantee.

Caveat: Since the “ten acre” rule of 19 O.S. § 866.13 can be modified, the examiner should determine whether an order had been made on or after April 23, 1968, effecting such modification.

D. LATEST TES COMMITTEE AGENDA

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

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

2015 APRIL AGENDA
(As of April 10, 2015)

[NOTE: SEE MEETING DATES & LOCATIONS AT THE END OF THIS AGENDA]

[NOTE: IF YOU NEED A FREE PDF COPY OF THE CURRENT 2015 TES HANDBOOK, GO TO WWW.EPPERSONLAW.COM]

_____*APR 18 STROUD*_____

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 (Carson)

PRESENTATIONS

==========PENDING==========
10:00 a.m. – 10:45 a.m.

Wimbish & Epperson Goodwin	**17.5**	**Apr Report**	***SCOPE OF DETERMINATION OF HEIRSHIP*** ***The question has been raised as to whether this newly revised standard should be clarified to explain -- practically speaking--how it confirms ownership (or marketable title) in unlisted real property AND how it***

			avoids further quiet title suits as to OTC liens, judgment and other liens, and mortgages, on OTHER lands owned by the same decedent. (Epperson, comments from multiple attorneys)

(Doyle?)	**???**	**Apr Report**	***BANKRUPTCY*** ***(A) The Bankruptcy section has had discussion about the degree of notice imputed to a creditor when property is occupied by a tenant. (b) Also, how should an examiner handle a parcel of real property omitted from the inventory? Is the adoption of a new standard or the amendment of an existing standard necessary?***

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

PRESENTATIONS (CONT'D)

11:00 a.m. – 12:00

Wimbish **McEachin**	**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. Also need to consider whether to add a Caveat that all titles are subject to any bankruptcy filings anywhere in the country without local notice being filed.***

<u>McEachin</u> **Epperson** **Sullivan** **Seda** **Bublis** **Vallen** **Keen**	**30.9 & 30.10**	**Apr Report**	***MRTA & Co-Tenancy Termination*** ***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)***

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

_____MAY 16 TULSA_____

Ward/ <u>Schaller</u>	**NA**	**May Report**	***LEGISLATIVE UPDATE*** ***Brief presentation concerning proposed or pending legislation affecting real property titles.***
Carson Kempf	**???**	**May Report**	***SERVICE MEMBERS CIVIL RELIEF ACT*** ***Due to recent changes in this Act, it appears that the related Standards need to be reconsidered.***
Astle Orlowski Schomp Shanbour Seda	**15.2**	**May Draft**	***TRUST/TRUSTEE SIGNORS*** ***The question has arisen as to whether it is acceptable for a conveyance of title held by the trustee(s) is conveyed by the trust. (Astle)***
Brown Wimbish McLean	**25.5**	**May Draft**	***OKLAHOMA TAX LIEN*** ***The question has arisen as to whether there currently exist any statutory (or regulatory) authority to cause an Oklahoma Estate Tax Lien to lapse after 10 years. The prior statute which created such extinguishment has been repealed. (Brown)***

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

==========UNSCHEDULED==========

(Noble?)	**17.4**	**Unsch**	***"TRANSFER ON DEATH" DEED*** ***Further clarifications may be needed for the existing Standard are there is any statutory amendments.***
(Astle & Noble?)	**6.7**	**Unsch**	***DURABLE POWER OF ATTORNEY*** ***Further revision may be needed for the existing Standard if there are any statutory amendments.***

==========TABLED TO 2016==========

(Wittrock & Evans?)	**???**	**Jan Tabled**	***ACCESS TO DEATH CERTIFICATES*** ***The question has been raised as to how to overcome the current interpretation of 63§1-323 which is preventing attorneys and other third parties from getting copies of Death Certificates to file with Affidavits to Terminate Joint Tenancy, and Severed Mineral Affidavits of Heirship, and similar filings. Legislation may be necessary. Social Security Account Numbers for deceased persons are already freely available on-line, so that is not a valid reason to withhold death certificates from public access and use.***

(Epperson & McEachin?)	**NEW**	**Jan Tabled**	***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?***

(Wimbish & Doyle?)	**30.13**	**Jan Tabled**	***MRTA/ABSTRACTING*** ***A review of this Standard 30.13, in light of 16 O.S. 71-80, and 46 O.S. 203, raises a question as to why pre-Root Bankruptcy proceedings survive under the MRTA, since 16 O.S. 76 does not expressly list Bankruptcy proceedings as exempt for the MRTA extinguishment feature.***

(Epperson &	**30.9**	**Jan Tabled**	***MRTA/Deed as Root: All Right, Title and Interest*** ***What quantity of title is included in either a warranty***

McEachin?)	**& 30.10**		***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 cannot 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?***

(McEachin & Munson & Epperson?	**30.1 et seq**	**Feb Tabled**	***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)***

(McEachin?)	**24.12 & 24.13**	**Feb Tabled**	***MERS*** ***This issue has become a national topic and ongoing out of state cases will be monitored and reported on as necessary.***

COMMITTEE OFFICERS:

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

Comm. Sec'y: Barbara Carson, Tulsa (919) 605-8862

barbaracarson@yahoo.com

(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2015\Agenda2015 04(Apr)

2015 Title Examination Standards Committee

(Third Saturday: January through September)

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

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

2014 Title Examination Standards Committee

	Name	City	Office
	Kraettli Q. Epperson	Oklahoma City	Chair
	Barbara L. Carson	Tulsa	Secretary
1.	Dale L. Astle	Tulsa	
2.	Rusty Brown	Tulsa	
3.	William Doyle	Tulsa	
4.	Larry Evans	Tulsa	
5.	Bill Gossett	Duncan	
6.	Jennifer Jones	Oklahoma City	
7.	Ralph F. Keen	Stillwell	
8.	J. Fred Kempf	Oklahoma City	
9.	G.W. “Bill” Newton	Tulsa	
10.	D. Faith Orlowski	Tulsa	
11.	Deborah Reed	Tulsa	
12.	Bonnie Schomp	Seminole	
13.	Roberto L. Seda	Oklahoma City	
14.	Chris Smith	Edmond	
15.	Scott Sullivan	Oklahoma City	
16.	Michael L. Tinney	Oklahoma City	
17.	Charis L. Ward	Oklahoma City	
18.	Robert White	Oklahoma City	
19.	John B. Wimbish	Tulsa	
20.	Monica Wittrock	Oklahoma City	

APPENDIX 2

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER

(Effective June 26, 2014)

STATUS REPORT

State		Last Revised		Standards		
		Pre-2009	2009+	#Ch.	#Stands.	#Pgs.
1.	Arkansas	-	01-01-13	22	133	54
2.	Colorado	-	05-00-13	15	136	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	-	03-00-14	16	108	90
9.	Kansas	00-00-05	-	23	71	122
10.	Louisiana	00-00-01	-	25	233	99
11.	Maine	-	10-17-12	09	72	90
12.	Massachusetts	-	05-05-08	N/A	74	103
13.	Michigan	-	05-00-13	29	430	484
14.	Minnesota	-	11-15-13	N/A	97	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	-	10-00-13	16	96	99
19.	New Hampshire	-	12-31-13	13	184	38
20.	New Mexico	00-00-50	-	06	23	05
21.	New York	01-30-76	-	N/A	68	16
22.	North Dakota	-	00-00-12	18	191	231
23.	Ohio	-	05-13-09	N/A	53	45
24.	Oklahoma	-	11-15-13	23	125	115
25.	Rhode Island	-	04-00-14	14	78	78
26.	South Dakota	06-21-03	-	N/A	66	58
27.	Texas	-	08-02-13	16	90	80
28.	Utah	06-18-64	-	N/A	59	13
29.	Vermont	-	09-00-10	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**			

APPENDIX 3

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

(Last Revised March 24, 2015)

284. **"Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions, & Title Examination Standards for 2013-2014", Tulsa Title and Probate Lawyers Association (February 12, 2015)**

283. **"Oklahoma Real Property Title Curative Acts as Reflected in Selected Title Examinations Standards", Handling Real Estate Transactions from Start to Finish (for National Business Institute CLE) (February 2, 2015)**

276. **"Marketable Record Title: A Deed Which Conveys Only the Grantor's 'Right, Title and Interest' Can be A 'Root Of Title'", 85 OBJ 1104 (May 17, 2014)**

275. **"Title Examination Standards in America and in Oklahoma", Oklahoma City University, School of Business "Energy Law Masters Program" (Property Law), Oklahoma City, Oklahoma (May 14, 2014)**

274. **"'Defensible Title' When Examining Oil and Gas Interests: An Overview of the Law in Oklahoma, and Oklahoma Severed Minerals Affidavit of Heirship", Garfield County Bar Association, Enid, Oklahoma (May 13, 2014)**

266. **"Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2012-2013", Boiling Springs Legal Institute – Boiling Springs State Park, Woodward County, Oklahoma (September 17, 2013)**

265. **"Oil and Gas Title Examination Basic Terms", Oil & Gas Title Examination – Oklahoma Bar Association, Tulsa, Oklahoma (September 12, 2013) and Oklahoma City, Oklahoma (September 13, 2013)**

264. **"Nontestamentary Transfer of Property Act: An Update on Oklahoma's Use of the Transfer-on-Death Deed (Effective 2011)", Capital Division Order Analyst Association, Oklahoma City, Oklahoma (June 18, 2013)**

263. **"Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: for 2011-2012", Oklahoma Bar Association – Real Property Law Section 2013, Cleverdon Roundtable Seminar, Tulsa, Oklahoma (May 10, 2013), and Oklahoma City, Oklahoma (May 22, 2013)**

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