UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY: STATUTES, REGULATIONS, CASES, ATTORNEY GENERAL OPINIONS & TITLE EXAMINATION STANDARDS REVISIONS FOR 2015-2016

(Covering July 1, 2015 to June 30, 2016)

Presented For the:
Boiling Springs, Woodward County Bar Association: Annual Seminar

At:
Boil Springs State Park, Woodward, OK: September 19, 2017

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(C:\mydocuments\bar&papers\papers\302 Title Update(15-16)(Boiling Springs--Sep 2017)

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State Univ. of N.Y. at Stony Brook [M.S. (Urban and Policy Sciences) 1974]; &
Oklahoma City University [J.D. (Law) 1978].

PRACTICE: Oil/Gas & Real Property Title Litigation (Curative; Appeals; Expert Consultant/Witness)
Oil/Gas & Surface Title Opinions
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MEMBERSHIPS/POSITIONS:
OBA Title Examination Standards Committee (Co- & Chairperson: 1988-Present);
OBA Nat'l T.E.S. Resource Center (Director: 1989 - Present);
OBA Real Property Law Section (current member, former Chairperson);
OBA Mineral Law Section (current member)
OKC Real Property Lawyers Assn. (current member, former President);
OKC Mineral Law Society (current member);
Kiwanis (Downtown OKC Club--member and former President); and
BSA: *Vice Chair & Chair, Baden-Powell Dist., Last Frontier Council (2000-2007); former Cub master, Pack 5, & Asst. Scout Master, Troop 193, All Souls Episcopal Church*

SPECIAL EXPERIENCE: Court-appointed Receiver for 5 Abstract Companies in Oklahoma;
Oklahoma City University School of Law adjunct professor: "Oklahoma Land Titles" (1982 - Present), & "Oil & Gas Title Examination" (2015-Present)
Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor and Contributing Author;
Basye on Clearing Land Titles, Author: Pocket Part Update (1998 – 2000);
Contributing Author:
Pocket Part Update (2001-Present)
Oklahoma Bar Review faculty: "Real Property" (1998 - 2003);
Chairman: OBA/OLTA Uniform Abstract Certif. Committee (1982);
In-House Counsel: LTOC & AFLTICO/AGT/Old Republic (1979-1981);
Urban Planner: OCAP, DECA & ODOT (1974-1979).

SELECTED PUBLICATIONS:
"The Oklahoma Marketable Record Title Act ("AKA The Re-Recording Act"): An Argument That This 30-Year Curative Act Can Extinguish Co-Tenancies", 87 OBJ 27, (October 15, 2015)
"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 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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APPENDICES

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, 2015, 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)

5th and Final 2016 Legislative Report
Oklahoma Title Examination Standards Committee
2nd Regular Session of the 55th Legislature
June 18th, 2016

Prepared by Ryan Schaller, Underwriting Counsel at First American Title and Trust Company
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Please do not hesitate to call or write if you know of a bill that should be included, think that a bill should be included under a different section, or would like to suggest a different interpretation of a bill.

Legislative Deadlines

~~To Pass out of Committees in Chamber of Origi~~n:
~~Senate – February 25; House – February 2~~6
~~To Pass out of Chamber of Origi~~n:
~~March 10 – Both Chamber~~s
~~To Pass out of Committees in Opposite Chamber~~:
~~Senate – April 7; House – April~~ 8
~~To Pass out of Opposite Chamber~~:
~~April 21 – Both Chamber~~s
~~Sine Die Day~~
~~May 27~~

Introduction – 5th and Final Update

Bills that are dead have been removed from this list with a few exceptions. At this point, bills must have been signed by Governor. Most of the bills originally introduced that may have had an impact on title standards or real property have not made it into law.

Any comments or interpretations are solely those of the author unless otherwise indicated.

SB1147/HB2586 – Sen. Crain, R-Tulsa, Rep. Perryman, D-Chickasha (both lawyers) – Death Certificates

Both bills would set up an electronic database for death certificates and provide updated guidelines on when and how death certificates can be created. The House bill provides that funeral directors will have access. Nothing in either bill explicitly states that the legal community would have access.

4/13 UPDATE: Both bills sent to Governor**. Senate version has been signed**. Electronic system should be active by July 1, 2017.

3/13 UPDATE: Both of these bills passed out of their respective chambers. Neither was amended in any substantial form.

~~HB2380 – Rep. Regina Goodwin, D-Tulsa – Amends 12 O.S. §759, Appraisers~~

~~**5/17 Update –** This bill is currently in a Conference Committee~~

~~**4/13 Update** – Substitute version of bill is ready for Senate vote. Amends current statute to replace "disinterested person" with "licensed real estate professional" and states that no "real estate professional" shall be eligible to appraise who is related within the third degree of affinity or consanguinity to the sheriff or any employee of the appointing sheriff's office.~~

This bill made it out of committee but the modified version did not make it to the Governor's desk.

SB361 – Sens. Dahm and Pittman, Rep. Denney – Eminent Domain

This is a bill from 2015 hat was revived in April and signed into law by the governor. It amends three statutes that deal with eminent domain, and repeals some other.

27 O.S. 1 – removes the word "mills" from the list of public enterprises that eminent domain can be used for.

27 O.S. 3 – deletes the provision that would pay appraisers $4 a day for their services in appraising property for eminent domain. Statute now reads "shall receive compensation for the time actually engaged in making such appraisement."

27 O.S. 7.10 – Previously this statute related to a "common carrier pipeline" bearing the expense if private property had to be moved due to eminent domain. This bill deletes the word "Pipeline." The statute now uses the more general phrase "common carrier" instead of "common carrier pipeline".

This bill repeals the following sections of 27 O.S. – 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, and 7.11.

SB874 – Sen. Patrick Anderson, R-Enid (Lawyer) – Small Estate Affidavit

5/17 UPDATE – The $50,000.00 version of this bill has been signed by Governor. The only language changed in 58 O.S. 393 is the dollar amount. Everything else stays the same. This bill would raise the amount of the "Small Estate Affidavit" from $20,000 to $100,000.00. 3/13 UPDATE: Passed the Senate

4/13 UPDATE: This bill passed the house. It was amended to lower the amount to **$50,000.00** in the House. The amended bill is back in the Senate now.

SB902 – Sen. Patrick Anderson, R-Enid (Lawyer) – Guardian Qualifications

This bill would require a Guardian to be a citizen or legal resident.

6/10 UPDATE – This has been signed by Governor.

5/17 UPDATE – In Conference Committee.

4/13 UPDATE: Passed the House with an amendment changing the effective date. Amended bill is back in the Senate now.

SB1495 – Sen. Corey Brooks, R-Washington - Notice on Guardianship Petitions

This bill would add an additional party in some circumstances that would need to receive notice of a petition to appoint a guardian.

Sent to Governor on 5/17. Not signed as of this writing. Signed by Governor

4/13 UPDATE: Has passed House with Amendments. Amended version not yet heard in Senate. Don't think that the Amendments substantially change the analysis below.

3/13 UPDATE: This bill does 2 things, first it adds the following language to Title 12, Section 2024 (A)(2) –

"provided, there shall be a rebuttable presumption that disposition of a petition requesting the appointment of a guardian for an incapacitated or partially incapacitated person will impair or impede the ability to protect property or other rights of the persons required to receive notice of the appointment pursuant to Section 3-110 of Title 30 of the Oklahoma Statutes."

Secondly, it includes a perspective ward's adult nieces and nephews in the list of people that must receive notice in the event that the ward does not have certain other relatives.

HB3017 – Rep. Calvey, R-OKC (Lawyer) and Sen. Sykes, R-Moore (Lawyer) – Living Wills

This is a very lengthy bill that would amend 58 O.S. §1072.1.

6/10 UPDATE – This has been signed by Governor.

5/17 UPDATE: In Conference Committee

4/13 UPDATE: Passed Senate Committee. Not yet voted on by full Senate.

3/13 UPDATE: This is a 19 page bill and difficult to summarize briefly. It appears to create an additional form that would allow a person to tell their physician how they want to receive end of life treatment. I don't see that this would replace the Living Will or the Durable Power of Attorney and I'm not sure how they would interact. It does not appear that this form could be used to assign real property rights.

~~HB3162 – Hickman, R-Fairview (Speaker) – Will Replace the JNC with partisan committee~~

6/10 UPDATE – Died in Conference

5/17 UPDATE: In Conference Committee. The Senate attached amendments to this bill that would basically strip the House of any authority in the Judicial selection process. The House did not accept the Senate amendments. Please check the OK Bar's website for continuing updates on this bill.

4/13 UPDATE - Up for a full Senate vote.

HB3158 - Rep. Jeff Hickman (Speaker of House), R-Fairview – Corporation Commission Emergency Powers

5/17 UPDATE: Signed by Governor. This was passed as Emergency Legislation, so paragraph D, quoted below, is now law.

4/13 UPDATE - Sent to the Governor. Adds the following paragraph D to 17 O.S. 52:

"D. For purposes of immediately responding to emergency situations having potentially critical environmental or public safety impact and resulting from activities within its jurisdiction, the Corporation Commission may take whatever action is necessary, without notice and hearing, including without limitation the issuance or execution of administrative agreements by the Oil and Gas Conservation Division of the Corporation Commission, to promptly respond to the emergency."

SB16 – Sen. Fields, R-Wynona and Rep. Enns, R-Enid –

5/17 UPDATE: Signed into law.

4/13 UPDATE - Sent to the Governor. Final version of this bill simply changes meeting frequency for the Oklahoma Water Resources Board.

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Please do not hesitate to call or write if you know of a bill that should be included, think that a bill should be included under a different section, or would like to suggest a different interpretation of a bill.

III. REGULATORY CHANGES

(NONE)

IV. CASE LAW

A. OKLAHOMA SUPREME COURT CASES

(JULY 1, 2015-JUNE 30, 2016)
LIST OF CASES

NO.	TOPIC	CASE	OKLAHOMA CITATION	DECIDED	MANDATE
A. OKLAHOMA SUPREME COURT CASES					
1	CONTRACT FOR DEED; FORCIBLE ENTRY AND DETAINER; WASTE; MAINTAIN INSURANCE; ABUSE OF PROCESS	McGinnity v. Kirk	2015 OK 73	11/3/2015	12/4/2015
2	TRANSFER ON DEATH DEED; MORTGAGE ENFORCEMENT; DEBT OF ESTATE	In the Matter of the Estate of Carlson	2016 OK 6	1/20/2016	2/18/2016
3	EASEMENT; DAM REHABILITATION	Logan County Conservation District v. Pleasant Oaks Homeowners Association	2016 OK 65	6/7/2016	7/21/2016
4	DEFAULT JUDGMENT; ENTRY OF APPEARANCE	Schweigert v. Schweigert	2015 OK 20	4/14/2015	5/20/2015

A. OKLAHOMA SUPREME COURT

1. McGINNITY V. KIRK (2015 OK 73)

TOPIC: CONTRACT FOR DEED; FORCIBLE ENTRY AND DETAINER; WASTE; MAINTAIN INSURANCE; ABUSE OF PROCESS

HOLDING: A CONTRACT FOR DEED COVEYS EQUITABLE TITLE, BUT BUYER MUST SATISFY CONTRACT TERMS OR FORECLOSURE IS ALLOWED.

FACTS: The Kirks bought a house from Neeces under a contract for deed. Neeces sold contract for deed to McGinnitys. Over several years the land and house were allowed to deteriorate and they also let the property insurance lapse. Current assignees/owners of contract for deed filed two actions simultaneously: one for eviction under the forcible entry and detainer statute, and another for foreclosure of the mortgage, due to breach of contract (waste, deterioration and no insurance). Payments were current.

TRIAL COURT RULING: The instrument was admittedly a contract for deed, and that meant McGinnitys held legal title and a mortgage, while Kirks held equitable title and obligations as the mortgagor, including certain contractual obligations. The FED and mortgage actions were consolidated. Judgment for McGinnitys on all issues. Property sold to McGinnitys at sheriff's sale. Kirk's appealed.

COURT OF CIVIL APPEALS RULING: Affirmed trial court.

SUPREME COURT RULING: Because value of land was adequate to satisfy mortgage debt, there was no waste; reversed trial court and COCA. Because the land and house were allowed to deteriorate to the extent that it was uninsurable, and Kirks failed to pay for such insurance, such breach of contract allowed a foreclosure; affirmed trial court and COCA on foreclosure.

Simultaneous pursuant of FED and mortgage foreclosure was not an abuse of process, since they were not used to extort other concessions, but were used only to achieve the usual purposes, even if a claim was ultimately rejected; affirmed trial court and COCA.

2. **IN THE MATTER OF THE ESTATE OF CARLSON (2016 OK 6)**

TOPIC: TRANSFER ON DEATH DEED; MORTGAGE ENFORCEMENT; DEBT OF ESTATE.

HOLDING: WHERE WILL TERMS REQUIRE THE ESTATE TO PAY THE MORTGAGE DEBTS OF THE DECEASED, THOSE TERMS SUPERSEDE THE TRANSFER ON DEATH DEED STATUTE TO THE CONTRARY.

FACTS: Grantor executed a mortgage on each of two properties, and the mortgages were filed. Thereafter the owner/mortgagor simultaneously executed and filed a transfer on death deed for each property to a different grantee. In addition, on the same day that those two TODD deeds were executed, the grantor signed a will with language requiring the estate to pay all of the grantor's debt, including "any debts secured by mortgage or pledge of real or personal property…" When the grantor died shortly thereafter, the two grantees and one of the lenders filed claims with the personal representative for the grantor's estate. The lender also filed a foreclosure on its note and mortgage, on one of the properties. All of the claims were denied by the personal representative, and the grantees and the lender filed an ancillary claim with the court to determine whether the estate had to pay the secured debts.

TRIAL COURT RULING: The trial court granted the decision requested by the grantees and lender, holding that the estate must pay for the two notes, pursuant to the express terms of the will.

COURT OF CIVIL APPEALS RULING: The trial court was reversed when the COCA held (1) that the grantees lacked standing to present any claim to the estate since the debt was not owed to them, and (2) that, while the lender had standing to enforce the debt owed to it, but that such claim against the estate was premature until after the foreclosure was completed and a deficiency on the judgment awarded, if any.

SUPREME COURT RULING: The COCA was reversed, and the trial court was affirmed. The Supreme Court held that (1) the two TODD deeds and the will were executed simultaneously as an estate plan, (2) the language of the TODD act (58 O.S. §§1251-1258) which said "[g]rantor beneficiaries of a transfer-on-death deed take the interest …subject to all recorded…mortgages…made by the record owner…".(12 O.S.§1255(A)), was superseded by the express language of the will requiring the estate to pay such obligations; (3) the lender had standing to assert the obligation of the estate to pay the debt immediately without awaiting a foreclosure because such delay would frustrate the purpose of the grantee; and (4) the grantees of the TODD deeds had standing to assert the claim against the estate to pay the debt because they met the elements required for standing: actual injury, nexus, and possible court remedy.

3. **LOGAN COUNTY CONSERVATION DISTRICT v. PLEASANT OAKS HOMEOWNERS ASSOCIATION (2016 OK 65)**

TOPIC: EASEMENT; DAM REHABILITATION

HOLDING: A WRITTEN EASEMENT FOR A DAM INCLUDED LANGUAGE ALLOWING FUTURE REHABILITATION OF THE DAM.

FACTS: Easements for a dam were given and recorded. Later it was determined that the dam needed to be upgraded because the risk from failure of the dam went from harm to agriculture and infrastructure to loss of life because of residences built downstream. The landowners owning land under the easement lands filed suit for a declaratory ruling to prevent such rehabilitation, or to receive compensation for such alleged additional taking.

TRIAL COURT RULING: Summary judgment was awarded to the conservation district and against the landowners because the words "operation and maintenance", which were found in the easements, included future rehabilitation. Consequently, no additional compensation was appropriate.

COURT OF CIVIL APPEALS RULING: (NA; Supreme Court retained jurisdiction.)

SUPREME COURT RULING: Affirmed the trial court. It also held that the conservation district was not only allowed, but was required by the language of the easements (found in deeds), "to operate and maintain FWRS [the dam] to ensure it was in good repair and serving its intended purpose."

4. **SCHWEIGERT v. SCHWEIGERT (2015 OK 20)**

[INCLUDED BY SPECIAL REQUEST*]

TOPIC: DEFAULT JUDGMENT; ENTRY OF APPEARANCE

HOLDING: NO DEFAULT JUDGMENT MAY BE GRANTED IN THE ABSENCE OF A MOTION AND HEARING FOR DEFAULT JUDGMENT, IF A PARTY EITHER FILES AN ENTRY OF APPEARANCE OR PHYSICALLY "MAKES" AN APPEARANCE.

FACTS: Wife filed for divorce. Husband was properly served, but he never filed a written entry of appearance or an answer. At an initial hearing to grant temporary custody, the husband physically appeared in person, but again he never filed an entry of appearance or answer. An appropriate order was filed, but no copy was sent to the husband. A year later, a minute order set a hearing for default judgment, and after the hearing a permanent order was issued granting the divorce, giving custody of children to wife with supervised custody to husband, and awarding child support to wife. No motion for default was filed and no notice of this second hearing was sent to the husband, who was not represented by counsel. No copy of the final order was sent to the husband. Husband filed a motion two years later to vacate the divorce decree based on fraud and lack of due process.

TRIAL COURT RULING: Trial court denied the husband's motion to vacate the final order finding, "Respondent [husband] failed to meet Rule 10 requirement of entry pursuant to 12 O.S. §2005.2, and therefore Petitioner [wife] was not required to provide notice of default hearing to Respondent [husband]".

COURT OF CIVIL APPEALS RULING: The trial court decision was affirmed. The husband sought Cert.

* This case belongs in the previous year's report on cases, but was omitted then and is included here to give notice of its holdings.

SUPREME COURT RULING: The Supreme Court granted the Petition for Cert. The Supreme Court vacated the COCA opinion, and reversed the trial court's denial of the motion to vacate the judgment, and remanded with instructions.

The Supreme Court's review of the facts of this case and Rule 10, led it to conclude:

> (¶1) *"The dispositive question raised for our review is whether a party must file a motion for default and give the adverse party notice under Rule 10 of the Rules of District Courts, 12 O.S. 2011, ch. 2, app. (Rule 10), when the adverse party fails to file an answer or an entry of appearance but physically appears at a hearing. We answer in the affirmative."* (emphasis added)

The Supreme Court quoted from Rule 10 which provides in pertinent part:

> *"In matters in default in which an appearance, general or special, has been made or a motion or pleading has been filed, default shall not be taken until a motion therefore has been filed in the case and five (5) days notice of the date of the hearing is mailed or delivered to the attorney of record for the party in default or to the party in default if he is unrepresented or his attorney's address is unknown. If the addresses of both the party and his attorney are unknown, the motion for default judgment may be heard and a default judgment rendered after the motion has been regularly set on the motion and demurrer docket. It shall be noted on the motion whether notice was given to the attorney of the party in default, to the party in default, or because their addresses are unknown, to neither.*
>
> *Notice of taking default is not required where the defaulting party has not made an appearance...."* (emphasis added)

In other words, the Supreme Court held that while 12 O.S. §2005.2 expressly requires that a party "file an entry of appearance" to avoid being in default, Rule 10 only requires a party to have "made an appearance" to require a motion, a hearing and, if possible, notice of an intention to take a default judgment. (¶14)

The court noted that an irregularity in securing a judgment (such as this failure to file the Motion and failure to attempt to give notice of the hearing on the Motion) can be challenged within three years of the judgment, and held that the challenge in this particular case was filed timely. [12 O.S.§ §651(1) can vacate for irregularity; and 1031(3)(B) request for vacation can be made within 30 days

after the judgment is mailed to the other party, and, under 1038, within 3 years of an irregularity] The objectionable order was apparently never mailed to the husband. Presumably, this holding means that any existing or future default judgment, which is less than three years past the date the subject default judgment was mailed to the defaulting party, if taken in the absence of a motion and hearing, and attempted service, can be vacated due to such irregularity, where the losing party "made" a physical appearance.

[AUTHOR'S COMMENT]:

It should be noted that this decision is not expressly limited to divorce cases, and consequently probably applies to all civil matters, such as mortgage foreclosures and quiet title cases.

In addition, the language of this opinion includes two other troubling statements, which seem to go further than the basic holding, and call for a change in current practice.

One states:

> ¶15 *"This language [of Rule 10] mandates that a motion must be filed in all instances, **even when a party fails to make an appearance**, and the motion must recite what notice was given, and, if none were given, the reason therefore."*

This holding mandates that while no notice may be necessary-- where no entry of appearance was filed and no physical appearance was made – that, nevertheless, a motion for a default judgment is always needed. You cannot just place the proposed order in the judge's in-box (and receive a signed copy in the judge's out-box) without a motion, even if you include language in the order showing the conditions allowing the default to be taken and disclosing whether notice was given, and, if not, why not.

This language in ¶15 fails to clearly state whether a hearing is also always required, even when no notice is required, in addition to requiring a motion, before taking a default judgment. However, the language of Rule 10 as quoted by the Supreme Court, which calls for a motion-- even in the absence of the filing of an entry of appearance or the making of a physical appearance-- makes it clear that the "notice" pertains not to notice of the filing of the motion, but to notice of the hearing on the motion: *"default shall not be taken until a motion has been filed in the case and five (5) days notice of the date of the hearing is mailed or delivered…".*

The usual mantra for satisfying due process requirements calls for "notice and an opportunity for a hearing". If such a hearing is always required in order to take a default judgment, which will require a significant change in the current practice of litigators.

Another troubling statement provides:

> Footnote 1: *"Because Father was within the time limitations of Title 12, Section 1038 for filing the motion to vacate [within three years of irregular judgment] and the district court was within the time limits of Title 12, Section 1031.1 [thirty days of the mailing of the judgment, which was never mailed], we need not address whether the divorce decree was void and subject to being vacated at any time."*
>
> According to 12 O.S. §1038: *"A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby."*

This raises two issues for the title examiner: (1) does he have to confirm that any final judgment that he is seeking to rely upon as part of his chain of title has been mailed to the opposing party (as shown on the face of the record), and (2) does he have to worry whether such omission–i.e., not filing a motion and holding a hearing –renders the judgment void, even after 3 years?]

OKLAHOMA COURT OF CIVIL APPEALS CASES

(JULY 1, 2015-JUNE 30, 2016)

LIST OF CASES

NO.	TOPIC	CASE	OKLAHOMA CITATION	DECIDED	MANDATE
B. OKLAHOMA COURT OF CIVIL APPEALS					
1	FORECLOSURE; STANDING	Bank of America, N.A. v. Ash	2015 OK CIV APP 69	8/7/2015	9/24/2015
2	CONDEMNATION; NUISANCE ABATEMENT	Vaughn v. City of Muskogee	2015 OK CIV APP 76	2/10/2015	10/15/2015
3	CONDEMNATION; RIGHT TO JURY	Oklahoma Turnpike Authority v. Siegfried Companies, Inc.	2015 OK CIV APP 78	4/3/2015	10/15/2015
4	PERMANENT INJUNCTION; NOMINAL DAMAGES	Autumn Wood Farms, LLC v. Bynum	2015 OK CIV APP 90	9/28/2015	11/4/2015
5	WATER RESOURCES BOARD AUTHORITY JURISDICTION; CONDEMNATION; EASEMENT	Taylor v. Oklahoma Water Resources Board	2015 OK CIV APP 99	11/5/2015	12/4/2015
6	TRESPASS; USE OF HIGHWAY EASEMENT BY PRIVATE PARTY	Buckles v. Triad Energy, Inc.	2015 OK CIV APP 101	6/3/2015	12/14/2015
7	CONDEMNATION; VALUATION METHOD; ATTORNEY FEES	State ex rel. Dept. of Transportation v. Caliber Development Co. LLC	2016 OK CIV APP 1	7/9/2015	1/5/2016
8	TAX RESALE; APPLICATION OF TAX PAYMENTS TO OLDER DEBT	Mueggenborg v. Place	2016 OK CIV APP 8	12/29/2015	2/8/2016
9	TAX RESALE; NOTICE OF RESALE	Jayson W. Davidson Trust v. Brockhaus	2016 OK CIV APP 11	8/26/2015	3/7/2016

10	MARITAL DISSOLUTION; JUDGE-MADE LIEN; INDEFINITE LIEN DUE DATE; GIFT IF JOINT TENANTS	Gress v. Kuhn	2016 OK CIV APP 13	12/18/2015	3/7/2016
11	ATTORNEY FEES; COSTS VS. EXPENSES	Natural Gas Anadarko Company v. Venable	2016 OK CIV APP 15	7/10/2015	3/23/2016
12	MORTGAGE FORECLOSURE; PURPOSE OF LOAN	First National Bank in Marlow v. Bicking	2016 CIV APP 22	12/30/2015	4/14/2016
13	PRESCRIPTIVE EASEMENT; LICENSE	Manar v. Wesson	2016 OK CIV APP 29	4/8/2016	5/4/2016

B. OKLAHOMA COURT OF CIVIL APPEALS:

1. **BANK OF AMERICA, N.A. v. ASH (2015 OK CIV APP 69)**

TOPIC: FORECLOSURE; STANDING

HOLDING: STANDING CAN BE CHALLENGED WHERE IT IS UNCLEAR WHETHER THERE IS ONE OR TWO NOTES, AND ONE OR TWO MORTGAGES.

FACTS: Bank of America foreclosed a mortgage asserting it held a note and a related mortgage (given to Sears), and an amended note (signed the same day as the initial note) (given to Countrywide). The note and amended note were apparently endorsed to the Bank.

TRIAL COURT RULING: A summary judgment was granted to the Bank foreclosing one unidentified note on the mortgage. The judgment was given only after the Bank filed an amended petition with a belatedly endorsed note. The debtor appealed.

COURT OF CIVIL APPEALS RULING: Reversed. While the COCA affirmed that the Bank had standing as the holder of at least one of the notes, there was an unresolved question of fact as to whether there was one note and an amended version or a second note, and which note the mortgage related to, and whether there was a second mortgage given with the second/amended note.

2. **VAUGHN v. CITY OF MUSKOGEE (2015 OK CIV APP 76)**

TOPIC: CONDEMNATION; NUISANCE ABATEMENT

HOLDING: EVEN IF TAKER FAILS TO FILE OBJECTION TO COMMISSIONERS' REPORT, IT CAN PROVE THERE WAS NO TAKING.

FACTS: City went through the process to have the lands declared a nuisance, and then had the house demolished. The landowner sued for inverse condemnation and objected to the Report and demanded a jury trial. The Commissioners' award was $1,952,682.00. On the last day to file such objection and demand for a jury trial on valuation, the landowner withdrew them, and on the next day (one day late!) the City filed its objection and demand for jury trial. Such late filing was rejected by the Supreme Court.

TRIAL COURT RULING: After parties stipulated that the City removed the structure and personal property, the court refused to let the City offer a defense to the allegation there had been a taking. The City tendered an offer of proof that the City acted correctly when demolishing the structure, and that therefore there had not been a taking. The landowner asserted that the award was for the building and the personal property, and that no land was included in the compensation. Both sides appealed.

COURT OF CIVIL APPEALS RULING: The COCA remanded to require the landowner to establish there had been a taking.

3. **OKLAHOMA TURNPIKE AUTHORITY v. SIEGFRIED COMPANIES, INC. (2015 OK CIV APP 78)**

TOPIC: CONDEMNATION; RIGHT TO JURY.

HOLDING: WAIVER OF RIGHT TO JURY TRIAL WILL NOT BE IMPLIED.

FACTS: OTA condemned some land and the Commissioners' Report was for $795,414.00, about $400,000.00 above the OTA appraisal. The OTA objected to the Report and demanded a jury trial on the valuation. The OTA paid the amount into court and took possession of the land.

TRIAL COURT RULING: The case dragged on from 2000 to 2012, and was dismissed for lack of prosecution by the OTA under Rule 9 or the general discretion of the court. The OTA objected to the dismissal, and then appealed.

COURT OF CIVIL APPEALS RULING: Reversed and remanded. The right to a jury trial is inviolate, unless waived in writing or orally in open court. It was not waived and the court abused its discretion to deny the jury trial.

4. **AUTUMN WOOD FARMS, LLC v. BYNUM (2015 OK CIV APP 90)**

TOPIC: PERMANENT INJUNCTION; NOMINAL DAMAGES

HOLDING: PAST BLOCKAGE OF ACCESS DOES NOT JUSTIFY PERMANENT INJUNCTION, AND NOMINAL DAMAGES ARE $1.00 AND NOT $1,000.00.

FACTS: Plaintiff's predecessor in title received a written driveway easement from Defendant's predecessor in title, which was properly recorded. Defendant installed a gate to exclude plaintiff. Plaintiff tore the gate down, and defendant did not reinstall a gate.

TRIAL COURT RULING: Plaintiff's suit for a permanent injunction against interference with access, and actual and punitive damages was granted, including $1,000.00 nominal damages and $3,000.00 in treble damages for forcible eviction. Defendant appealed.

COURT OF CIVIL APPEALS RULING: Reversed and remanded. Past actions without indication such actions will continue do not justify permanent injunction, and nominal damages are $1.00 and not $1,000.00, and no force was used to exclude the plaintiff.

5. **TAYLOR v. OKLAHOMA WATER RESOURCES BOARD (2015 OK CIV APP 99)**

TOPIC: WATER RESOURCES BOARD AUTHORITY JURISDICTION; CONDEMNATION; EASEMENT

HOLDING: THE OKLAHOMA WATER RESOURCES BOARD (OWRB) MUST HEAR A PETITION ON WHETHER A DAM IS HIGH HAZARD, EVEN IF A CONDEMNATION ACTION IS PENDING

FACTS: The OWRB held an easement to maintain a dam. When the OWRB sought to conduct rehabilitation on the dam, the landowner secured an injunction prohibiting the work because the area of the work exceeded such easement area. The OWRB sued in District Court to condemn the additional easement area asserting that such easement was necessary because the dam was a "high hazard" dam, meaning its failure would threaten life, rather than just agriculture and infrastructure. The landowner filed a petition with the OWRB to have the board confirm that the dam had never been declared to be "high hazard". The OWRB declined to rule on such request saying it had no jurisdiction to rule on that issue, because such issue was before the District Court in the condemnation action, where the landowner objected to such condemnation due to the absence of a need, since it was not a "high hazard" dam.

TRIAL COURT RULING: The District Court in the condemnation action ruled the dam was not "high hazard" dam since no evidence was presented to establish that fact. The OWRD appealed.

COURT OF CIVIL APPEALS RULING: The COCA held that the condemnation court could only decide whether the OWRB board could consider the issue as to whether the dam was or was not "high hazard", and could not make that factual determination itself. Such initial determination was exclusively in the control of the OWRB (although subject to appeal). The COCA reversed the trial court's substantive decision and remanded the matter back to the OWRB for the initial

determination on the status of the dam. Thereafter, the parties could appeal the decision of the OWRB.

6. **BUCKLES v. TRIAD ENERGY, INC. (2015 OK CIV APP 101)**

TOPIC: TRESPASS; USE OF HIGHWAY EASEMENT BY PRIVATE PARTY

HOLDING: A CUSTOMER OF ELECTRICAL SERVICE IS NOT A TRESPASSER OR AN AIDER AND ABETTER FOR SUCH TREPASSING

FACTS: An oil and gas operator asked OG&E to provide electrical service to its well. OG&E constructed above ground poles and lines to provide such service, in the state highway right of way. The owner of the land under the half of the roadway affected by the poles and wires sued the operator, but not OG&E, for continuing trespass asking for injunctive relief to remove the poles and lines, and monetary damages. No approval of the use of the roadway was secured from the county commissioners, although such approval was required by statute, if such county rules exist calling for such approval.

TRIAL COURT RULING: Summary judgment was granted to the defendant operator because it was only a customer and had no control and no involvement in the installation of the poles and wires. No county rules requiring permission were offered in evidence.

COURT OF CIVIL APPEALS RULING: Trial court was affirmed.

7. **STATE EX REL. DEPT. OF TRANSPORTATION v. CALIBER DEVELOPMENT CO. LLC (2016 OK CIV APP 1)**

TOPIC: CONDEMNATION; VALUATION METHOD; ATTORNEY FEES

HOLDING: THE STATUTORY METHOD OF VALUATION IN CONDEMNATION REQUIRES MEASURING DAMAGE TO LAND TAKEN AND ALSO TO LAND REMAINING, AND CAN ONLY OFFSET BENEFIT TO REMAINING LAND TO THE DAMAGE TO SUCH REMAINING LAND AND NOT TO LAND TAKEN.

FACTS: ODOT condemned lands to widen a roadway by taking two corners and the frontage on a highway, and paid the commissioners' award to the landowner. Both parties asked for a jury trial on value (Commissioners: $1,351,250.00; ODOT: $595,000.00; landowner: $6,766,000.00; jury: $2,670,351.00).

TRIAL COURT RULING: Trial court limited testimony from ODOT's expert which tried to assert the loss of the two corners and the frontage was offset because the remaining land still had the resulting corners and the resulting frontage. This testimony was not allowed due to the amended statute providing you can no longer offset the benefit to the remaining land against the loss to the land taken, but can only offset it against the damage to the remaining land. Attorney fees of $376,526.97 were awarded to the landowner, due to multiple continuances of the trial for 5 years by ODOT, and three depositions of ODOT's expert witness who was repeatedly unprepared.

COURT OF CIVIL APPEALS RULING: Trial court was affirmed.

8. **MUEGGENBORG v. PLACE (2016 OK CIV APP 8)**

TOPIC: TAX RESALE; APPLICATION OF TAX PAYMENTS TO OLDER DEBT

HOLDING: TREASURER MUST APPLY TAX PAYMENT AGAINST THE OLDEST TAXES PURSUANT TO LANDOWNER'S INSTRUCTIONS.

FACTS: Landowner paid the Treasurer money and directed that it be applied on the 2010 real property taxes (the oldest taxes), but Treasurer applied them to the taxes for 2012 and 2011, creating a "back tax issue" for the 2010 taxes. Treasurer sold the land at resale for the 3-year old taxes (2010). There was a dispute over whether the notice of the resale was sent to a proper address and whether it was received. Buyers at the tax sale filed their deed and advised landowner of ownership under tax resale deed. Buyers filed a forcible entry and detainer action to evict prior landowner. Landowner removed case to district court and sought to quiet title against the buyers under the tax resale deed.

TRIAL COURT RULING: The trial court granted a motion for summary judgment by the prior landowners based on the misapplication of their payment to the wrong year's taxes, meaning there was not the required 3 years of unpaid taxes. The landowner and county officials did not dispute the misapplication of taxes and only argued about the adequacy of the notice. The trial court refrained from ruling on the notice issue as being mooted by his decision on the absence of a debt for taxes. The tax resale deed holder and the county officials appealed.

COURT OF CIVIL APPEALS RULING: The COCA affirmed, and refused to issue a holding whether the county is required --in the absence of direction from the payor on how to apply the payment—to apply the payment to the oldest taxes due.

9. **JAYSON W. DAVIDSON TRUST v. BROCKHAUS (2016 OK CIV APP 11)**

TOPIC: TAX RESALE; NOTICE OF RESALE

HOLDING: WHERE THE TREASURER FAILS TO TAKE ADDITIONAL STEPS TO GIVE NOTICE WHEN THE MAILED NOTICE IS RETURNED "UNCLAIMED" SUCH NOTICE IS INSUFFICIENT DUE PROCESS, AND THE RESULTING SALE AND TAX RESALE DEED ARE VOID

FACTS: Title was held by a trust and a memorandum of trust was filed to show there was a successor trustee (Brockhaus). Taxes were unpaid. Treasurer sent certified notice of an impending tax resale to the address of the sister of Brockhaus, and it was returned unclaimed. A brother of Brockhaus lived on the property, but no notice was delivered or sent to him. Publication notice was given, and the resale was conducted. The resale tax deed was delivered and recorded, and the buyer filed a forcible entry and detainer action to remove the trustee's brother who lived on the property. The matter was removed to district court to quiet title and to eject the trustee's brother.

TRIAL COURT RULING: After several amended pleadings were filed and a motion for summary judgment by the buyer was denied, the trial court granted a summary judgment to the prior landowner, Brockhaus, due to the absence of adequate notice.

COURT OF CIVIL APPEALS RULING: The trial court was affirmed in part because the Oklahoma Supreme Court had just issued a ruling (Crownover) which, based on similar facts, rejected the mailed, but not received, notice—without further effort—as being inadequate. Even though the statute said receipt of the notice was not necessary, some additional effort—unspecified -- was required under due process requirements.

10. **GRESS v. KUHN (2016 OK CIV APP 13)**

TOPIC: MARITAL DISSOLUTION; JUDGE-MADE LIEN; INDEFINITE LIEN DUE DATE; GIFT IF JOINT TENANTS

HOLDING: A JUDGE-GRANTED LIEN IN A DIVORCE DECREE CAN BE MADE WITHOUT A DUE DATE, AND A DOWN PAYMENT IS DISREGARDED WHERE TITLE IS HELD JOINTLY

FACTS: Man and woman lived together and acquired land as joint tenants as "single", and gave a mortgage on it. The man paid the down payment. They entered thereafter into a common law marriage. The title was conveyed back and forth between them to avoid debts, but at time of divorce it was in both of them as joint tenants.

TRIAL COURT RULING: The trial court granted the land to the husband subject to the third party mortgage, and awarded the wife equity based on a valuation as of the date of separation, and after giving the husband credit for his down payment. The wife's equity was secured by a judge-made lien with no due date. Wife appealed.

COURT OF CIVIL APPEALS RULING: The trial court's order was reversed as to giving the husband credit for the down payment because the law provides that in the absence of fraud such down payment is treated as a gift where title is put in both parties, whether or not they are married. The indefinite life of the lien was left in place. The case was remanded to adjust the wife's equity, due to the disallowance of the credit for the down payment to the husband.

11. **NATURAL GAS ANADARKO v. VENABLE (2016 OK CIV APP 15)**

TOPIC: ATTORNEY FEES; COSTS vs. EXPENSES

HOLDING: WHERE THE DEFENDANT REFUSES TO SIGN A CURATIVE INSTRUMENT AND THEN PREVAILS AT TRIAL ON SUCH CLAIM OF INTEREST, THE DEFENDANT IS ENTITLED TO ATTORNEY FEES AND COSTS

FACTS: Oil and gas lessor/defendant filed an affidavit in the land records asserting that a specific lease had expired as to certain non-producing leases. The lessee/plaintiff sent a demand to the lessor/defendant, pursuant to the Nonjudicial Marketable Title Procedures Act, asking the lessor/defendant to sign an attached release of the affidavit. The lessor/defendant refused, and the lessee/plaintiff sued to quiet title to such lease, and two other leases.

TRIAL COURT RULING: In an earlier decision, the trial court granted judgment to the lessor/defendant holding the lease had expired, and such decision was sustained on appeal. In a subsequent hearing, the lessor/defendant was also awarded attorney fees and costs as the prevailing party under the NMTPA. Such ruling also granted certain expenses beyond the basic set of costs allowed to the prevailing party under 12 O.S. §942. The lessee/plaintiff appealed.

COURT OF CIVIL APPEALS RULING: Trial court was affirmed. The lessee/plaintiff asserted that there were three leases involved in the quiet title suit, and that the lessor/defendant only prevailed on the non-producing lease, and not the two producing leases. This argument was rejected by both the trial court and on appeal because (1) only the one non-producing well was covered in the demand and the accompanying release of affidavit, and (2) only the non-producing lease was ever really at issue.

[Author's Comment: it is not clear, but it appears that the two other leases were included in the lawsuit, but that the lessor/defendant never contested their continuation] The lessee/defendant

asserted that about $300 worth of expenses were granted by the trial court which were not included in the list of allowable expenses granted to the prevailing party under 12 O.S. §942. The trial court and appellate court explained that such additional litigation expenses were permitted under the terms of the NMTPA.

12. **FIRST NATIONAL BANK IN MARLOW v. BICKING (2016 CIV APP 22)**

TOPIC: MORTGAGE FORECLOSURE; PURPOSE OF LOAN

HOLDING: SUMMARY JUDGMENT IS NOT APPROPRIATE WHERE PURPOSE OF LOAN WAS IN DISPUTE. AMENDMENT OF IMPROPER LOAN DOES NOT CORRECT VIOLATION

FACTS: Borrower borrowed money to pay off prior home mortgage and credit cards, and to purchase one or two vehicles. The loan had an excessive rate of interest, if it was a personal loan rather than a business loan. The loan was modified a year later to a lower (proper) rate, and for an extended period. It went into default and the lender foreclosed.

TRIAL COURT RULING: The trial court granted a summary judgment to the bank denying all of the counterclaims by the borrower, including claims that the loan rate was excessive for a personal loan. The bank said it was a business loan and was not subject to such limitations. The bank also said the amended note extinguished any prior violations.

COURT OF CIVIL APPEALS RULING: Reversed and remanded to determine whether the loan was for personal or business purposes, and ruled that the amended note does not extinguish the prior note's violations, if the loan was determined to be for personal purposes.

13. **MANAR v. WESSON (2016 OK CIV APP 29)**

TOPIC: PRESCRIPTIVE EASEMENT; LICENSE

HOLDING: A PERMISSIVE ROADWAY USE IS A LICENSE AND CANNOT RIPEN INTO AN EASEMENT

FACTS: A wagon trail across third party's land was used for a long time by the public to access landlocked lands. A road was built across the land with the permission of the underlying land owners. The underlying landowners added a gate but gave the users a key to the lock. The users filed suit to quiet title granting them an easement.

TRIAL COURT RULING: The trial court concluded the road was an easement by prescription, but not a public road. Both parties appealed.

COURT OF CIVIL APPEALS RULING: Affirmed the holding that the road was not dedicated to the public and was not a public road by prescription, since the county disclaimed any interest. Reversed the holding that the roadway was an easement by prescription, and instead ruled that it was a license which can be terminated at any time. A permissive use can never ripen into adverse possession.

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 issued by any insurance company authorized to do business in this state shall be countersigned by some person, partnership, corporation or agency actively engaged in the real estate title business and maintaining an office in the state, who is duly appointed agent of a title insurance company holding a valid license and authorized to do business in the state; provided, that no policy of title insurance shall be issued in the State of Oklahoma except:*
>
> *1) After examination by an attorney licensed to practice in this state of a duly certified abstract extension or supplemental abstract prepared by an abstractor licensed in the county where the property is located, from a certified abstract plant in the county where the property is located or per a temporary certificate or authority as provided in Section 33 of Title 1 of the Oklahoma Statutes, from the effective date of a prior owner's policy of title insurance issued by a title insurer licensed in this state provided by the insured pursuant to the policy at the time a valid order is placed pursuant to the provisions of the Oklahoma Abstractors Law brought forward to the effective date of abstract plant. Subject to the conditions and stipulations, the exclusions from coverage, exceptions from coverage and endorsements to the policy, any policy issued based on a prior owner's policy and a supplemental abstract shall insure the insured against loss or damage sustained or incurred by reason of unmarketability of title from sovereignty to the effective date of policy, not to exceed the amount of insurance stated in the policy; or*
>
> *2) If the previously insured owner does not provide a copy of the owner's policy of title insurance, then a title insurance policy may be issued after examination by an attorney licensed to practice in this state of a duly certified abstract of title prepared by a bonded and licensed abstractor as defined in the Oklahoma Abstractors Law.*

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.

A fairly new Oklahoma Supreme Court case has included some language that might be considered dicta, but which, when taken at face value, turns some existing understandings of actual notice and agency relationships on their head. While the Oklahoma Supreme Court was only ruling

on the issue of who was the prevailing party in a combined foreclosure and quiet title suit -- for attorney fees purposes -- the failure of the Supreme Court to take the opportunity to correct the prior unpublished COCA opinion creates some serious unintended consequences. In Benefiel v. Boulton, 2015 OK 32, the Supreme Court ruled:

> *¶4 Boulton [Defendant] initiated an appeal of the trial court judgment, and on March 31, 2011, COCA reversed the ruling and remanded the matter for further proceedings (Boulton I). The opinion in Boulton I made several findings which are relevant to the present appellate proceeding. First, COCA determined that Plaintiff's [Benefiel's] judgment lien was properly perfected.[1] [citing to Boulton I] Specifically, COCA found that notwithstanding Plaintiff's failure to file the divorce decree with the Seminole County Clerk, inclusion of the judgment in the abstract of title provided Boulton with actual notice of the lien. Therefore, Boulton purchased the residence subject to a valid preexisting encumbrance. Second, COCA noted the judgment lien was "analogous to a real estate mortgage lien which secures a specific parcel of real property for the payment of a sum of money."[2] Finally, the COCA opinion reversed summary judgment, finding the reversionary provision in the divorce decree was void because it deprived Boulton of the right to redeem the property.[3] On October 17, 2011, we granted certiorari for the limited purpose of vacating an appeal-related attorney fee award to Boulton issued by COCA. We issued an order which postponed a final ruling on attorney fees and directed the parties to submit their applications in the trial court once a prevailing party could be determined.[4]*

The Supreme Court's failure to explain or correct these two finding by the COCA in Boulton I leaves standing two new principals of law: (1) failure of the filing of the divorce decree did not prevent it from being "perfected" (i.e., notice to third parties), and (2) inclusion of the unrecorded divorce decree in the abstract that was supposedly seen -- but either overlooked or treated as a non-perfected or non-created lien -- by the title company's title examiner constituted "actual" notice to the buyer/insured who had no contractual relationship with the title company's title examiner, and no knowledge of the decree and its lien.

While it may be the practice of some or all abstract companies to include such unperfected divorce decrees in their abstracts, such practice puts the title examiner in the awkward position of

being aware of an unrecorded and, therefore, an unperfected lien. In First Community Bank v. Hodges, 1995 OK 124, the court held that because a divorce decree was recorded in the land records, pursuant to 16 O.S. §31, the judge-made lien created therein was "perfected" as to third parties, and specifically as to a bank seeking to have its properly filed judgment lien (under 12 O.S. §706) declared senior to such judge-made and recorded divorce decree lien for property division. Recording a judge-made lien seems necessary to its perfection.

In Benefiel the abstract company's inclusion of the decree was, apparently, not because the decree was a necessary link in the wife's chain of title, since the husband had given the wife a separate deed to the land. The title examiner in such circumstances can either require the release of the unrecorded and unperfected lien (unperfected as to the buyer, who would have been a BFP), and be accused of making creating curative requirements caused solely due to the abstract company's action, or, as happened here, the title examiner can omit mentioning the judge-made property division lien created in the decree, and force the buyer into the position of being given "actual notice", despite the buyer's lack of any personal knowledge of the decree and its lien. The Supreme Court could have avoided such unintended consequences by correcting or at least explaining such significant holdings. Does such relationship between the title company's title examiner and the third party insured/buyer create a "two way" street, where the buyer gets notice based on the title examiner's knowledge and as a consequence the buyer gets to sue the title examiner for his alleged negligence in omitting such significant information? Such liability by the title examiner to the third party buyer is already suggested in the earlier case of Vanguard, discussed immediately above, where the lender's title attorney was potentially liable to the buyer for an allegedly defective title opinion. This matter bears watching and possible clarification by the Supreme Court.

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))

The 2016 Oklahoma Supreme Court case (Calvert v. Swinford, 2016 OK 104) involved a lawsuit by grantors against their attorney and his law firm for negligence in failing to exclude minerals from a deed drafted by such attorney. The Supreme Court (¶0) held that:

> *We retained this cause, concerning the lawyer and law firm, to address the same dispositive issue of whether the statute of limitations for an action brought by a grantor begins to accrue when a deed is filed with the county clerk. We hold it does pursuant to our decision in 114,957, Calvert v. Swinford, 2016 OK 100, ___P.3d ___.*

Such statute of limitations was held to be 2 years for negligence -- 12 O.S. §95 (3) -- and 5 years for deed reformation -- 12 O.S. §95 (1). Consequently, filing an action 12 years, after the allegedly erroneous deed was filed in the county land records was barred by both statutes of limitations. See the two companion cases, Calvert v. Swinford, 2016 OK 105 (suit to reform the same deed against grantees), and Calvert v. Swinford, 2016 OK 100 (suit against the abstract office that conducted the closing with the same deed). Also see a similar case, decided at the same time, Scott v. Peters, 2016 OK 108 (suit to reform the deed to exclude minerals was barred because it was filed 14 years after the deed was filed in the county land records).

[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).

In a 2016 Oklahoma Supreme Court case (Blair v. Richardson, 2016 OK 96, ___ P.3d ___) the court relied on a Standard relating to mental capacity to convey title, and held:

> *The lack of capacity can be established in three ways. The Title Examination Standards[24] provide in part that:*
>
> > *On or after June 3,1977, lack of capacity must be established (i) in a mental health case filed prior to that date, (ii) in a civil action or (iii) in a guardianship proceeding.*
> >
> > *The specification of items in a list implies the exclusion of all others. The word "must" is an affirmative command. So, lack of capacity to convey property can only be established by a mental health case filed before 1977, a civil action, or a guardianship proceeding. Therefore, lack of capacity cannot be established by operation of statutory law, and consequently the operation of 43A O.S. 1961 §64 cannot establish the grandmother's lack of capacity.*

And, at footnote 24 of the Blair case, the Court stated:

> *In Knowles v. Freeman, 1982 OK 89, ¶ 16, 649 P.2d 532, this Court unanimously held that because the Title Examination Standards were adopted by the Oklahoma Bar Association and accepted by practitioners in the State, they are a persuasive authority.*

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 monuments form so generally the proofs of title in this country, that the courts of several jurisdictions hold not only <u>that a good or marketable title must have the attributes of that term as used by the equity courts, but also that it must be fairly deducible of record.</u> This phase of the matter will be considered further in the ensuing section.*
>
> *Determination of questions as to the marketability of titles is peculiarly within the province of counsel for buyer or mortgagee. Counsel for the owner will not only endeavor to remedy the condition of the title as to any requirements which he concedes to be proper, but usually finds it easier to do so than to contest the matter, even as to matters not so conceded. In the main it is only when compliance is impossible or when time for compliance is lacking or has passed that the question reaches the courts. Even then a decision is not always possible. This is because courts usually will not undertake to determine doubtful questions involving the rights of others who are not parties to the action.* (underlining)
> (§46. Classification of Vendor Titles)

Title insurance, like most types of insurance, insures against loss due to certain conditions. One of these conditions which triggers liability is "unmarketability of title". Such term is defined in such policy as: "an alleged or apparent matter affecting the title to the land, not excluded or accepted 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 stricter 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. (underlining 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 strictest 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 2016 T.E.S. REPORT WAS SUBMITTED TO THE NOVEMBER 3, 2016 ANNUAL REAL PROPERTY LAW SECTION MEETING AND TO THE NOVEMBER 4, 2016 OBA HOUSE OF DELEGATES MEETING AND HAS BEEN APPROVED. THESE STANDARDS ARE EFFECTIVE IMMEDIATELY UPON THEIR APPROVAL BY THE HOUSE OF DELEGATES

2016 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE
OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2017, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 4, 2016. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Oklahoma City on Thursday, November 3, 2016.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 4, 2016. 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 proposes to add a new Standard 3.1 B. (thereby redesignating current Standard 3.1 B to 3.1 C) to outline the circumstances that a stray instrument, even from a party or entity previously in title which is capable of being a root of title, may be disregarded.

B. Subject to the provisions of 3.1 C, a stray instrument or abstract thereof which is or could be a root of title under the Marketable Record Title Act, 16 O.S. §§ 71-80, may be disregarded by the examiner, if:

1) The stray instrument has been filed of record for less than thirty (30) years, and

2) There is a title transaction filed of record subsequent to the stray instrument which would prevent the stray instrument from becoming a root of title, and

3) Reasonable inquiry by the examiner reveals the person or entity which executed the stray instrument did not in fact have some interest in the subject property or did not have as great an interest as such person or entity conveyed, or if it appears from the context of the situation that the person or entity which executed the stray instrument did not in fact have some interest in the subject property.

Otherwise the stray instrument must be regarded as creating or potentially creating, a root of title

under the Marketable Record Title Act and creating a valid cloud on title.

3.1 C Pursuant to 16 O.S. § 76, an instrument which is executed by a person or entity, or a decree of distribution entered in the estate of a decedent, who or which does not otherwise appear in the chain of title to the property cannot be the basis of a root of title under the Marketable Record Title

Act, and therefore the examiner may waive any defect caused by such instrument, if: (1) there is apparent from the record an otherwise valid, uninterrupted chain of title traceable to an instrument which is a root of title as defined by the Marketable Record Title Act, and (2) a current record owner of the property executes and records an affidavit alleging the current owner or owners are in possession of the property and that the parties claiming under the instrument in question own no interest in the property.

Authority: 16 O.S. § 76.

PROPOSAL NO. 2

The Committee proposes to amend Standard 5.1 in order to modernize the wording of the Standard and give the examiner greater guidance in dealing with the topic covered by the Standard.

STANDARD 5.1 ABBREVIATIONS AND IDEM SONANS

Identity of parties should be accepted as sufficiently established in the following cases, unless the examiner is otherwise put on inquiry:

~~A.~~

A. Abbreviations of first or middle names: Where there are used commonly recognized abbreviations, derivatives or nicknames, such as "Geo." for George, "Jon." for John, "Chas." for Charles, "Alex." for Alexander, "Jos." for Joseph, "Thos." for Thomas, "Wm." for William, “Lse.” for Louise; and

B. Nicknames of first or middle names: Where there are used commonly recognized nicknames, such as, "Susan" for Suzanna, "Ellen" for Eleanor, “Liz” for Elizabeth, “Katie” for “Katherine, “Jack” for John, "Rick" for Richard, “Bob” for Robert, “Bill” for William; and

C. Application of Doctrine of *Idem Sonans* to first, middle and last names or surnames: Where the names, although spelled differently, sound alike or phonetically similar or when their sounds cannot be distinguished, such first names as in “Sarah” and “Sara”, “Catherine” and “Katherine”, “Jeff” and “Geoff”, “Mohammed” and “Mohammad” , “Li” and “Lee”, and such last names as in “Fallin” and “Fallon”, “Green” and Greene”, McArthur” and MacArthur”; and

D. In all instruments or court proceedings where (1) in one instance name or names of a person is or are used, and in another instance the initial letter or letters only of any such name or names is or are used but the surnames are the same or *idem sonans; (2)* in one instance a name or initial letter is used, and in another instance is omitted, but in both instances the other names or initial letters correspond and the surnames are the same or *idem sonans;* or (3) in one instance the middle name or initial is present and in another instance, the middle name or initial is absent, but the surnames are the same or *idem sonans*.

A greater degree of liberality should be indulged with the greater lapse of time and in the absence of circumstances appearing in the abstract to raise reasonable doubt as to the identity of the parties.

PROPOSAL NO. 3

The Committee recommends that Standard 8.1C be amended to reflect the uncertainty of the status of Oklahoma estate tax liens.

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

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

2. The sole surviving joint tenant or remainder interest holder is the surviving spouse of the deceased joint tenant or sole life tenant;

3. The date of death of the joint tenant is on or after January 1, 2010; or 4. The Oklahoma estate tax lien has otherwise been released by operation of law. S**ee the Caveat at TES 25.5.**

Authority: 16 O.S. §§53 A(10); 82-84; 58 O.S. §§23, 133, 282.1, 911 and 912; 60 O.S. §§36.1 and 74; 68 O.S. §§804 and 804.1 .

PROPOSAL NO. 4

The Committee recommends a new Standard 14.10 be adopted to define how title to real property should be held by a limited liability company with Series.

14.10 Limited Liability Company with Series

Title to real property which is to be held under a properly created limited liability company with established series, domestic or foreign, must be acquired, held and conveyed in the name of the limited liability company, with appropriate indication that such title is held for the benefit of the specific series.

Comment:

Because a series is merely an attribute of the LLC, the series may not hold title in its own name independent of the LLC. Examples of acceptable designations of the grantor or grantee in an instrument conveying title to real property to or from a particular series would be one of the following:

A) Master, LLC, an Oklahoma limited liability company, as Nominee for its Series ABC;

B) XYZ, LLC, a Texas limited liability company, on behalf of its Series ABC;

C) DEF, LLC, a Delaware limited liability company, for the benefit of its Series 2016-A.

In the event an LLC, which has merely provided for the establishment of series, acquires property prior to the actual establishment of such series or otherwise acquires property in the name of the LLC, the LLC shall evidence such transfer of interest from the LLC itself to the LLC for the benefit of the series, by appropriate conveyance.

This standard does not address the situation of real property held by a wholly owned subsidiary LLC, which is an entity capable of acquiring, holding and conveying real property in its own name.

Authority: 18 OS. §2054.4.B.

PROPOSAL NO. 5

The Committee recommends a new standard No. 24.15 to set out the extinguishment date of old attorney's liens and to define how an attorney's lien is to be preserved.

24.15 ATTORNEY'S LIENS

A title examiner shall disregard, as extinguished, an attorney's lien on real property, created on or before Thursday, August 21, 2014, pursuant to Title 5 O.S. Section 6, unless a Notice of Attorney's Lien had been recorded, on or before Monday, August 24, 2015, in the county clerk's office in the county in which the lien is sought to be preserved.

Authority: 5 O.S. Section 6

Comment: See Title 5 O.S. Section 6 for information regarding the procedure to create and extend an attorney's lien on real property initially created on or after Friday, August 22, 2014, being the effective date of the 2014 amendment to the statute by which the requirement for recordation of Notice of Attorney's Lien, outlined above, was promulgated.

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"

2017 AUGUST AGENDA

(As of August 14, 2017)

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

[NOTE: IF YOU NEED A FREE PDF COPY OF THE CURRENT 2017 TES HANDBOOK, GO TO WWW.EPPERSONLAW.COM]

AUGUST 19/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)
[INCLUDING DISCUSSION OF USE OF SPECIAL ADMINISTRATOR TO SELL REAL PROPERTY]

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

PRESENTATIONS

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

10:00 a.m. – 10:45 a.m.

Kempf & Seda **Keen Wimbish**	**7.1 & 7.2**	**Sep Report**	***MARITAL INTERESTS AND MARKETABLE TITLE*** ***Interest has been expressed in revisiting the question as to how to cure the absence of a recital of marital status and risk of a "void" deed for failure of one spouse to***

			join in execution of a deed to possible homestead property. Should TES 7.1 & 7.2 include mention of possible post-deed curative measures under limited circumstances to show that a deed was Not Void by the recital of non-homestead status by a later affidavit from persons who potentially had a homestead claim, if any, at the time of the deed by one spouse, in order to avoid need for a correction deed, quiet title, probate, or waiting 10 years. JULY: IT WAS DECIDED TO SEEK A LEGISLATIVE SOLUTION.

<u>Brown</u> **Jim Tack** **Scott McEachin** **Chris Shields** **Faith Orlowski** **Roberto Seda**	**30.10**	**Sept. Draft**	***QUIT CLAIM DEED OR TESTAMENTARY RESIDUARY CLAUSE IN THIRTY-YEAR CHAIN*** ***Under the MRTA "A recorded quit claim deed or residuary clause in a probated will can be a root of title or a link in a chain of title…". Can a residuary clause in an intestate decree also serve the same purpose?***

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

<u>PRESENTATIONS (CONT'D)</u>

11:00 a.m. – 12:00

<u>Brown</u> **Seda**	**8.1** **25.5** **15.4D**	**Aug Draft**	***OKLAHOMA TAX LIEN*** ***There has been new legislation enacted in 2017 which restores the authority to cause an Oklahoma Estate Tax Lien to lapse after 10 years. The prior statute which created such extinguishment had been repealed. The multiple Standards which are impacted by this new legislation need to be corrected/restored.***

<u>Reed</u> **McLean**	**14.10**	**Sept Draft**	***LLC WITH SERIES*** ***There has been new legislation enacted in 2017 which changes the status of titles held by Series with LLC. Our new standard needs to be revised to reflect this new legislation.***

<u>Astle</u> **Reed** **Wittrock** **Dryer** **Wimbish** **Seda**	**?**	**Aug Draft**	***MISSING ASSIGNMENT OF MORTGAGE*** ***The question has been raised as to whether a mortgage could be released by the current holder of the promissory note secured by such mortgage if evidence of the promissory note with all necessary endorsements thereon, together with adequate identification of such mortgage appear of record. The application of this criteria would be limited to circumstances in which an assignment of such mortgage is missing and unobtainable.***

<u>Epperson</u> **&** **<u>Seda</u>**	**NEW**	**Aug Report**	***JUDGMENTS/DECREES & CONSTRUCTIVE NOTICE*** ***Under the MRTA, the SLTA, and under the terms of the Uniform Abstractors Certificate, do documents that are <u>not</u> files 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?***

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

UNSCHEDULED

<u>Moore &</u> **Holmes?)**	**?**	**Unsch**	***ANCIENT PROBATES*** ***The question has arisen about the impact on title examination due to a recent COCA case overturning an ancient probate due to failure to mail Final Account to parties (despite no statutory requirement to do so, relying on constitutional due process grounds). This COCA was reserved on Cert (9-0). Bebout v. Ewell, case no. 114,364***

<u>Epperson</u>	**?**	**Unsch**	***NOTICE OF SPACING AND POOLING ORDERS*** ***The case of In re Cornerstone E&P Company v. Union Bank of California, 436 B.R. 830, US Bkcty Ct. N.D. Texas, 2010 (affecting Oklahoma titles) holds that in the absence of the OCC pooling order being filed in the***

			local county land records, there is no notice of such change in interest, to third party vendors. This holding may impact the Title Standards dealing with the filing of court orders covered by the SLTA and MRTA.
(Epperson?)	**30.9 &30.10**	**Unsch**	***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?*** **[KRAETTLI EPPERSON HAS AN ARTICLE ON THIS TOPIC WHICH WAS PUBLISHED IN THE OBJ IN OCT. 2016 -- THE COMMITTEE IS AWAITING FEEDBACK FROM THE MEMBERS OF THE BARON THIS ARTICLE BEFORE RECOMMENCING DISCUSSION OF THIS TOPIC.]**
(Epperson?)	**30.14**	**Unsch**	***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.***
(Epperson?)	**30.9 & 30.10**	**Unsch**	***MRTA/Deed as Root: All Right, Title and Interest*** ***What quantity of title is included in either a warranty or quit claim deed, using this language: "Al 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?

(Epperson?)	**30.9 & 30.10**	**Unsch**	***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?*** **[KRAETTLI EPPERSON HAS AN ARTICLE ON THIS TOPIC WHICH WAS PUBLISHED IN THE OBJ IN OCT. 2016--THE COMMITTEE IS AWAITING FEEDBACK FROM THE MEMBERS OF THE BAR ON THIS ARTICLE BEFORE RECOMMENCING DISCUSSION OF THIS TOPIC.]**

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			explaining this issue?

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

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

(<u>Wittrock?</u>)	**???**	**Unsch**	***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.***

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

<u>Shaller</u> **McLean** **Fisher**	**7.1 &** **7.2**	**June** **App'd**	***MARITAL INTERESTS AND MARKETABLE TITLE*** ***Due to recent judicial recognition of same sex marriages we need to add cites to the new cases, and we need to "clean up" our references in our standards to husband or wife, if a more neutral term is appropriate. Where we are quoting a case, it must remain unchanged.***

==========REJECTED==========

<u>Epperson</u> **Weintraub**	**3.2**	**May** **Tabled**	***AFFIDAVITS AND RECITALS*** ***Leisa Weintraub (general counsel to Tulsa County Assessor) needs assistance in determining what her duty is in regard to changing the county land tax records to reflect changes in land ownership when a new affidavit of heirship or ownership is filed in the land records. There are existing statutes (16 O.S. Sections 82 and 83 which refer to "ownership" and "heirship". The question has arisen: Why cannot those***

			two statutes be used to reflect

<u>Fisher</u> **Keen** **Kempf** **Dryer**	**?**	**Feb** **Reject**	***DEFAULT JUDGMENT INVALID WITHOUT NOTICE*** ***The new case of Schweigert v. Schweigert, 2015 OK 20, holds that a default judgment cannot be taken without notice to the defaulting party, even if the statutes allow a default judgment to be taken where the service was adequate and no entry or answer was filed. This holding may impact the Title Standards dealing with the SLTA and MRTA.***

==========*TABLED TO 2017*==========

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<u>COMMITTEE OFFICERS:</u>

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

Comm. Secretary: Barbara Carson, Tulsa (918) 605-8862
barbaracarson@yahoo.com

(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2017\Agenda 2017 08 (Aug)

2017 Title Examination Standards Committee

(Third Saturday: January through September)

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

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

Last Name	First Name
ANTHONY	Anita
ASTLE	Dale
BROWN	Byron (Rusty)
CARSON	Barbara
COULSON	Marilyn Olivo
DEFILIPPO	Diane
DODD	Morgan
EPPERSON	Kraettli Q.
EVANS	Larry
FISCHER	Jennifer
GOSSETT	Bill
HAND	Jeff
KEEN	Ralph
KEMPF	Fred
MCLEAN	Rhonda
MCMILLIN	Michael
ORLOWSKI	Faith
REED	Deborah
SCHALLER	Ryan
SCHOMP	Bonnie
SEDA	Roberto
SEIGRIST	Kent
SHANBOUR	B. Michael
SHIELDS	Chris
SULLIVAN	Scott
TACK	James
WARD	Charis L.
WIMBISH	Jack
WITTROCK	Monica

*** These members attended at least 3 out of 9 meetings in 2016**

APPENDIX 2

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER

(Effective July 15, 2016)

STATUS REPORT

State		Last Revised		Standards			Availability				
		Pre-2011	2011+	#Ch.	#Stands.	#Pgs.	1	2	3	4	5
1.	Arkansas	-	01-01-13	22	110	65				4	
2.	Colorado	-	07-01-14	15	135	72			3		
3.	Connecticut	01-12-09	-	30	151	471			3		
4.	Florida	-	06-00-12	21	143	187					5
5.	Georgia	-	05-00-14	-	39	194					5
6.	Idaho	c. 1946	-	-	-	-	1				
7.	Illinois	01-00-77	-	14	26	35		2			
8.	Iowa	-	06-00-16	16	118	114				4	
9.	Kansas	00-00-05	-	23	71	122			3		
10.	Louisiana	00-00-01	-	25	233	99			3		
11.	Maine	-	05-17-12	43	80	90				4	
12.	Massachusetts	-	05-07-12	N/A	74	103				4	
13.	Michigan	-	12-00-14	29	430	484			3		
14.	Minnesota	-	09-27-14	N/A	98	86			3		
15.	Mississippi	10-00-40	-	-	-	-		2			
16.	Missouri	05-15-80	-	N/A	26	17		2			
17.	Montana	c. 1955	-	N/A	76	78		2			
18.	Nebraska	-	10-03-13	16	96	99			3		
19.	New Hampshire	-	12-31-13	13	182	38					5
20.	New Mexico	00-00-50	-	06	23	05		2			
21.	New York	01-30-76	-	N/A	68	16		2			
22.	North Dakota	-	00-00-12	18	191	231			3		
23.	Ohio	05-13-09	-	N/A	53	45			3		
24.	Oklahoma	-	11-06-15	35	132	159					5
25.	Rhode Island	-	01-00-16	14	79	79			3		
26.	South Dakota	06-21-03	-	N/A	66	58					5
27.	Texas	-	10-00-14	16	90	80					5
28.	Utah	06-18-64	-	N/A	59	13			2		
29.	Vermont	-	09-00-14	28	43	61					5
30.	Washington	09-25-42	-	N/A	29	09			2		
31.	Wisconsin	02-00-46	-	N/A	15	08			2		
32.	Wyoming	07-01-80	-	22	81	99			2		
Total		**16**	**16**				**1**	**10**	**10**	**4**	**7**

Key:
1=No copy available
2=Paper copy only (not regularly updated)
3=Paper copy only (regularly updated)
4=Electronic copy available
5=Link to standards available

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

APPENDIX 3

LIST OF THE LATEST 10 ARTICLES, AUTHORED BY KRAETTLI Q. EPPERSON (OMITTING DUPLICATES)

(last revised August 31, 2017)

301. "Examination of an Abstract of Title in Oklahoma: A Procedural Outline," OBA Solo and Small Firm Conference, Durant, Oklahoma (June 24, 2017)

300. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions, & Title Examination Standards Revisions for 2014-2015", Oklahoma Bar Association: Cleverdon Round Table Seminar, Oklahoma City, Oklahoma (May 18, 2017) and Tulsa, Oklahoma (May 19, 2017)

294. "The Oklahoma Marketable Record Title Act ('aka' The 'Recording Act'): An Argument That This 30-Year Curative Act Can Extinguish Co-Tenancies," 87 OBJ 27 (October 15, 2016)

292. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions, & Title Examination Standards Revisions for 2014-2015", Oklahoma Bar Association: Cleverdon Round Table Seminar, Oklahoma City, Oklahoma (May 19, 2016) and Tulsa, Oklahoma (May 20, 2016)

286. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2013-2014," Boiling Springs Annual CLE, Boiling Springs Park, Oklahoma (September 15, 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)