



TITLE EXAMINATION STANDARDS

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 B 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. Where there are used common Abbreviations, derivatives or nicknames for Christian names, such as "Geo." for George, "Jon." for John, "Chas." for Charles, "Alex." for Alexander, "Bob" for Robert, "Eliza" or "Liza" for Elizabeth, "Jos." for Joseph, "Thos." for Thomas, "Wm." for

William, "Susan" for Suzanna, "Ellen" for Eleanor, "Rich." for Richard, "Mc" for Mac (as prefix to a name);

B. Names within the rule of the generally accepted doctrine of *idem sonans*; and

C. In all instruments or court proceedings where in one instance a Christian name or names of a person is or are used, and in another instance the initial letter or letters only of any such Christian name or names is or are used but the surnames are the same or *idem sonans*, and in one instance a Christian name or initial letter is used, and in another instance is omitted, but in both instances the other Christian names or initial letters correspond and the surnames are the same or *idem sonans*;

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.

STANDARD 8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES

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 net estate tax liability;

2. The joint tenant or life tenant has been dead more than ten (10) years;

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

3.4: 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. **See 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. §§804 811 and 804.1 815.

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.