

IV. THE USE AND APPLICATION OF
TITLE EXAMINATION STANDARDS

By: Kraettli Q. Epperson, Attorney-at-Law

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THE USE AND APPLICATION OF
TITLE EXAMINATION STANDARDS

A. INTRODUCTION

You as the examining attorney have the practical responsibility of satisfying your client while performing a task with a sufficiently high level of competence and quality to satisfy the standards of your profession as well. Your opinion of title (usually for a buyer of real property) must provide:

1. Certainty, to give peace of mind and to avoid unpleasant surprises for your client later, and in particular to protect against claims of third parties, and
2. Efficiency, to quickly identify and resolve any usual or unusual questions about possible title defects or encumbrances, without undue delay for extensive research or protracted and costly disputes with the other party's counsel.

This presentation and paper are geared to help you as an examining attorney to understand, to be comfortable with, and to use the Oklahoma Bar Association approved Title Examination Standards published as Chapter 1 to the Appendix to Title 16 of the Oklahoma Statutes (hereinafter "Standards"), and to thereby be more likely to achieve that Certainty and Efficiency necessary in your practice.

There are a variety of reasons the Standards were created, including:

1. Collecting all significant statutory and case law information on real property title questions in one place, including well known as well as obscure laws.
2. Educating examiners who are new to the practice of law, new to real property title work or just an infrequent examiner.
3. Resolving title questions subject to multiple interpretations among the members of the State Bar.

And because of this multi-purpose nature of the Standards some Standards are included which cover basic matters which are useful principally to the novice--such as rules on conveyancing by either corporations (Standards 9.1 to 9.3) or partnerships (Standards 10.1 to 10.6)--while other Standards cover more complicated or recently changed areas of the law--such as the fairly new rules on the steps necessary to perfect the lien of a money judgement (Standard 1.5) or the impact on titles of the new Bankruptcy Code (Standard 20.2).

I hope to ease the novice examiner into a comfortable reliance upon these Standards, while pointing out the pitfalls to avoid; while also convincing the experienced examiner that despite the false reputation of real property law as being a never changing area of law that even the expert examiner must make themselves aware of the rapidly changing aspects of the law

in this area which are disclosed more clearly in the Standards than in any other single source. Not every seller's attorney will rollover and play dead when you represent the buyer and demand an unnecessary quiet title suit or a release of an unperfected money judgment just because you want "to play it safe". You need to know what the rest of the examining attorneys within the profession think about a topic and why they think that way.

In the subsections that follow I will present to you these topics on the Standards: B. History, C. Development and Approval Process, D. Authority, E. Format, F. Uses, G. Warnings and H. Conclusion, followed by Appendixes showing #1-Title Insurance Statute, #2-1983 Title Examination Standards Committee Officers and Members, #3-Attorney General's Opinion #79-230 (August 31, 1979), #4-1982 Title Examination Standard Changes and Additions, #5-Paper on Reasons for the 1982 Changes and Additions, and #6-1983 Title Examination Standards Under Discussion.

B. HISTORY

According to the Oklahoma Supreme Court:

"A marketable or merchantable title is synonymous with a perfect title or clear title of record; and is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record." (See Standard 4.1)

But the questions remain: how "perfect", how "clear", how "free from apparent defects, grave doubts and litigious

uncertainty" must the "record" title be to be considered "marketable" or "merchantable"? Who makes these decisions? Which documents, if any, from outside the "record" are acceptable? Should all conveyances in Oklahoma of real property or interests therein be halted until every single title defect is cured, however minor or correctable the defect may be? Of course not, but where is the reasonable middle ground? A consensus among the members of the profession offers the most workable solution.

While it is true that there is Oklahoma statutory and case law directly addressing many if not most questions on title to real property, these answers are often hidden in diverse, obscure and sometimes unlikely Titles or cases and are sometimes subject to multiple interpretations. And all too often there is no Oklahoma law on point at all. Oklahoma generally uses individual examinations by licensed attorneys of certified abstracts of title to real property to determine the acceptability (i.e., "marketability") of title prior to purchase of that property. Such examinations are required by statute only where title insurance is being issued (See Appendix #1). However, many examining attorneys have varying degrees of experience with real property titles, they may or may not be aware of recent changes in this area of law and they may approach titles in a dramatically different way from their fellow examiner simply due to differences in personal philosophy. Such a decentralized

system provides obviously fertile ground for large numbers of disputes in a transaction (i.e., usually a residential sale) which seldom involves enough money to justify expensive curative litigation or specific enforcement action to enforce the purchase contract.

In order to establish a uniform approach to examination of titles and thereby minimize differences of opinion on the status of the same title, local title attorney groups in Oklahoma City and Tulsa each adopted ten (10) title examination standards in 1946. In the intervening years many additional Standards or changes to existing Standards have been adopted by the Oklahoma Bar Association and relied upon extensively by examining attorneys. There are currently over 70 Standards approved by the State Bar. As the law continues to change or as additional questions of law surface more adjustments in the Standards will need to occur.

C. DEVELOPMENT AND APPROVAL PROCESS

1. Approval Process

The Real Property Section (hereinafter "Section") of the Oklahoma Bar Association (hereinafter "OBA") is a recognized major division of the OBA with a set of Bylaws, a Board of Directors and a set of officers (including a Chairman, Chairman-elect, Secretary and Treasurer). The Section's Board of Directors has in turn established a working committee called the "Title Examination Standards Committee" (hereinafter "Committee")

which has a set of officers (including a Chairman, Vice-Chairman and Secretary), and which depends on a voluntary membership of attorneys to accomplish its goals. Professor Joe Rarick of the University of Oklahoma Law School has served as the General Counsel for the Committee for a number of years, and he has the additional duty of ensuring that the Standards' citations are correct and uniform. This Committee was created in the late 1940's.

It should be noted that a new "Abstracting Standards Committee" was created in 1982 under the auspices of the Section to advise and work with the non-attorney "Uniformity and Standards Committee" of the Oklahoma Land Title Association (i.e., the State abstractors' association), and that a new "Legislative Committee" under the Section has been established this year (1983) to review and comment on pending State legislation affecting real property title matters (such as the Affidavit Recognition Act and the Abstractors' Regulatory Board Act (SB533)).

This Committee is responsible for the drafting and submittal of the Standards. The members of this Committee are licensed attorneys who are active in and interested in improving the handling of questions on real property titles (See Appendix #2). This Committee, through sub-committees made up of its members, researches the status of the law in Oklahoma on significant title questions and, where there is a clear statement

of the law, a brief but accurate summary is prepared and adopted by the OBA as a Title Examination Standard in Chapter 1 to the Appendix to Title 16 of the official Oklahoma Statutes. Such Standard contains (1) an identifying number, (2) a heading, (3) a statement of the law, (4) Cross References, if any, (5) Authorities, (6) Notes, Comments and Caveats, if any, and (7) a brief History of the adoption and modification of the Standard.

2. Development Process

At the beginning of each calendar year individual members of the Committee, and other interested members of the Bar, identify topics needing to be addressed. These include:

a. Changes to existing Standards

- (1) Typographical errors and other mistakes
- (2) New statutes or case law
- (3) Clarifications

b. New Standards

- (1) Prior but unmentioned law
- (2) New statutes or case law

The topics proposed are briefly discussed at the monthly Committee meetings to determine how important they are, what the real core issue is and which Committee members, if any, would be interested in working on each topic. Then each issue selected for study is assigned to a sub-committee of attorneys and a leader within each sub-committee is designated for coordination and reporting purposes. Then the attorneys research all known

sources to determine the current law in Oklahoma on the subject. The most challenging aspect of developing a Standard is locating and analyzing the applicable law. The primary source is either the Oklahoma Statutes or case law. Then, if this effort fails, the researchers turn to secondary sources such as Oklahoma Attorney General Opinions, laws and title examination standards from sister states, national and local treatises and national model title examination standards (e.g., Simes and Taylor, Model Title Standards).

The Committee meets monthly and the designated sub-committee leaders present in written form their proposed language for a Standard and set out the citations of authority for their position. Often there are minority reports and alternative language presented followed by a lively and technical discussion. If a general concensus can be reached on some proposed or compromise language, then a Standard is approved by the Committee and sent to the Section for review and approval at its annual meeting. The Section's annual meeting is held during the OBA annual meeting. In the case of a major split within the Committee with a sizeable minority rejecting the proposed Standard, the matter will usually be tabled until an acceptable compromise is achieved, perhaps during the next year, or the project is dropped. The Committee's policy is that it is better to have no Standard than to have an incorrect one. After adoption by the Section at its annual meeting, each Standard is

presented to the OBA House of Delegates at its annual meeting for amendment and final adoption or rejection. At each stage the proposed Standards can be and have often been modified or killed.

In order to encourage comments from the State Bar at large, these proposed Standards are published approximately one month before the annual OBA meeting in the End-of-the-Month issue of the Oklahoma Bar Journal (usually the November issue). After final adoption by the OBA House of Delegates they are republished in final form in the next End-of-the-Month issue of the Oklahoma Bar Journal which is usually the January issue.

D. AUTHORITY

A reasonable examiner (like the "reasonable man") might well ask "why should I bother to look at the Title Examination Standards or be persuaded by another examiner who claims to have relied on them?" There are several good reasons:

1. The Standards carry the official stamp of approval of the OBA through its House of Delegates,
2. The Standards represent the "custom "or "standards" which are generally accepted throughout the State by the members of the State Bar,
3. The Standards are founded directly upon clear statutory or case law, or at least on the best treatises available on the subject, with such law or treatises identified in the Standard,

4. The real estate purchase contract in question, if any, may have incorporated the Standards as the gauge of the marketability of a title. (NOTE: The Oklahoma City Metropolitan Board of Realtors standard purchase contract incorporates the Standards.)

As stated recently by Justice Lavender of the Oklahoma Supreme Court in Knowles v. Freeman (53 OBJ 1893 (1982)), concerning defendant's reliance upon "Standard 4.4 Corrective Instruments":

The foregoing Title Examination Standards (16 O.S. 1981, Ch. 1, App.) were adopted by the House of Delegates of the Oklahoma Bar Association on November 29, 1962, as a result of an extensive study of established standards for determining a marketable or merchantable title to real property under the law of Oklahoma. While said 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 the 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. (Emphasis added)

And while the Attorney General's Office found that "Title examination standards are not state statutes and, are not promulgated by the Legislature", "Title examination standards are adopted by the Oklahoma Bar Association through its House of Delegates and are published as a part of the Oklahoma Statutes Annotated by the West Publishing Company as a convenience to the title examiners" and "The title examination standards are uniform

interpretations for the application of the law that attorneys should use when examining titles." (AG Opin. #79-230 (Aug 31, 1979)). (See Appendix #3).

E. FORMAT

The Standards are currently divided up into 20 major divisions called Chapters which have arabic identifying numerals and which include the following topic headings:

- CHAPTER 1. THE ABSTRACT
- CHAPTER 2. THE TITLE EXAMINER
- CHAPTER 3. USE OF THE RECORD
- CHAPTER 4. MARKETABLE TITLE
- CHAPTER 5. NAME VARIANCES
- CHAPTER 6. EXECUTION, ACKNOWLEDGMENT AND RECORDING
- CHAPTER 7. MARITAL INTERESTS
- CHAPTER 8. JOINT TENANCIES AND LIFE ESTATES
- CHAPTER 9. CORPORATE CONVEYANCES
- CHAPTER 10. CONVEYANCES INVOLVING PARTNERSHIPS AND JOINT VENTURES
- CHAPTER 11. TITLE THROUGH DECEDENTS' ESTATES
- CHAPTER 12. EXECUTION AND ATTACHMENT
- CHAPTER 13. MORTGAGES
- CHAPTER 14. MECHANICS', MATERIALMEN'S OR OTHER IMPROVEMENT LIENS
- CHAPTER 15. SOLDIERS' AND SAILORS' CIVIL RELIEF ACT
- CHAPTER 16. MISCELLANEOUS
- CHAPTER 17. FEDERAL TAX LIENS--GENERAL, ESTATE AND GIFT
- CHAPTER 18. SIMPLIFICATION OF LAND TITLES ACT
- CHAPTER 19. MARKETABLE RECORD TITLE ACT
- CHAPTER 20. BANKRUPTCIES

These Chapters are divided into sub-divisions covering specific aspects of the Chapter topic. For example "CHAPTER 6. EXECUTION, ACKNOWLEDGEMENT AND RECORDING" includes the following sub-headings:

- 6.1 Defects in or Omission of Acknowledgments in Instruments of Record.
- 6.2 Omissions and Inconsistencies in Instruments and Acknowledgments.

- 6.3 Revenue Stamps.
- 6.4 Delivery; Delay in Recording.
- 6.5 Foreign Executions and Acknowledgments.

Each such sub-heading is a summary of the law on a topic, and is referred to as a "Title Examination Standard" or, for example, "Title Examination Standard 1.1. Recertification Unnecessary".

Each Standard has (1) an identifying number (e.g., "1.1"), (2) a heading, (3) a statement of the law, (4) Cross References, if any, (5) supporting Authorities, (6) Notes, Comments and Caveats, if any, and (7) a brief History of the adoption and modification of the Standard.

Here are three sample Standards, the first one (6.5) is based on a Statute, the second one (6.4) is based on an Oklahoma case, and the third one (5.3) is based on certain treatises and national model standards:

6.5 Foreign Executions and Acknowledgments

An instrument executed and acknowledged or proved in any state, territory, District of Columbia or foreign country, in conformity with the law of such state, territory, District of Columbia or foreign country, or in conformity with the Federal Statutes shall be valid as to execution and acknowledgment, only, as if executed within this state in conformity with the provisions of law of this state.

Authority: 16 O.S.A. §37b.

History: The Standard was recommended by the 1980 Title Standards Committee, 51 O.B.J. 2726 at 27. It was approved by the Real Property Section, December 3, 1980 and adopted by the House of Delegates, December 5, 1980.

Adopted Dec. 5, 1980.

4.5 Reference to Property in Probate Decrees

Except as to estates of deceased spouses of record owners dying after the effective date of the community property law, reference in a probate case to property, the record title to which does not appear in the decedent, does not constitute a cloud on the title.

Authorities: Harrison v. Eaves, 191 Okl. 453, 130 P.2d 841.

History: Adopted as C., October 31, 1947, 18 O.B.A.J. 1750-1751; became 24, on renumbering in 1948, 19 O.B.A.J. 228 at which time it was reworded with no apparent change in meaning.

5.3 Recital of Identity

A recital of identity, contained in a conveyance executed by the person whose identity is recited, may be relied upon unless there is some reason to doubt the truth of the recital.

Authorities: Basye, Clearing Land Titles, Section 36.
Patton on Titles, 2d Edition (1957), Section 78.
And Simes and Taylor, Model Title Standards, Standard 5.4.

Comment: This Standard concerns statements of identity such as that Alfred E. Jones and A.E. Jones are the same person. It is not intended to apply where names differ in substantial and material ways.

History: Adopted as 5.3, December 2, 1961, 32 O.B.A.J. 2280, printed, id. at 1866, 1921, 1970 and 2030, see also id. at 1425.

F. USES

An examiner who runs across a possible defect or encumbrance in a title can either turn directly to the appropriate Standard,

if they remember which one it is, or they can scan the index to the Standards and then turn to the Standard. It is not enough, however, to review only the main body of the Standard and say "yes, this covers my situation" or "no, it does not". Instead, you must go further if you are to do a competent job. You must review the Comments, Notes and Caveats to confirm that there are no special circumstances from your case (such as actual notice of relevant facts not shown of record) putting your situation inside or outside the general rule stated in the body. For example, subpart (b) of the Comment under 1.1 Recertification Unnecessary" states "(b) It is not the purpose of the Standard to discourage or prevent examining attorneys from requiring recertification when in his judgement abstracting errors or omissions have occurred, or when they have reason to question the accuracy of all or a particular portion of an abstract record".

You must investigate the Cross Referenced Standards to ascertain if the related Standards change the status of your title, and you must, of course, verify in the History section whether the rule stated in this Standard was effective for the time frame when your title defect arose. However, many Standards are retroactive since they are often based on statutes of limitations or bars to asserting a cause of action.

As shown above in Knowles v. Freeman, if the Standard happens to fit your facts, you know that the other attorneys and the courts will be likely to find your position "persuasive" due

to the "research", and "careful study" behind the Standards and the "general acceptance among the members of the bar" of the Standards.

If it appears that your particular fact situation does not precisely fit the general rule stated in the body of the Standard, you can use the Authorities provided in the Standard as a beginning point for your review of the statutes, cases, or treatises such as Patton on Titles, or Basye, Clearing Land Titles, to determine what the law is with regard to your title.

If a Standard is on point and it tells you that a matter is not a defect or encumbrance, then you can either (1) ignore the offending instrument or (2) mention the instrument and make a statement similar to:

"Pursuant to 'Title Examination Standard 13.8 Unenforceable Mortgages and Marketable Title', the above described unreleased mortgage can be regarded as unenforceable and can therefore be ignored. No requirement. Advisory only."

Many attorneys state in their opinion words to the effect that:

"This Opinion was prepared in reliance upon the current Oklahoma Bar Association Title Examination Standards, which are hereby incorporated herein, and no matter was construed as a defect or encumbrance in title if the same was not so construed under the said Standards."

It can be very effective to state to opposing counsel, who raises an alleged defect which you passed due to the Standards, that "Sure, let's litigate this so-called defect, but remember

that the Oklahoma Bar Association has already stated its position on the matter in the Title Examination Standards".

Even if you refuse to accept the authority of the Standard itself, you can use it as a research tool to help you find the Statute, case or treatise that you will rely upon. There are some examiners who are so overly cautious that they refuse to accept the validity of numerous curative statutes because they have not yet been affirmatively found to be constitutional by the Oklahoma Supreme Court. I would respectfully request that these "doubting Thomases" study the authorities cited under "Title Examination Standard 2.3 Remedial Effect of Curative Legislation", which are both extensive and persuasive, and which address the issues of (1) presumed validity of statutes in general, and (2) presumed validity of various curative statutes, and statutes of limitation and adverse possession.

These Standards are a storehouse of information, insight and authority showing the collective concensus of the examining attorneys of the State.

G. WARNINGS

There are several dangers inherent in relying upon these Standards, including (1) improper application of a Standard through incomplete review or a misunderstanding of the general statement of law in the body of the Standard and the exceptions noted in the Cross References, Notes, Comments and Caveats, and History, (2) failure by the examiner to keep abreast of recent

changes in the statutory and case law which supercede the published Standards, (3) typographical errors in the Standard, (4) errors in legal analysis by the drafters of the Standard, (5) development of a Standard from secondary sources (e.g., Attorney General Opinions, sister state laws or treatises) which are subsequently overturned by primary sources (e.g., cases), and (6) court determined unconstitutionality of a Statute.

Exposure to these dangers cannot be totally eliminated even if you decide not to rely on the Standards, since most of these problems also crop up in the examining attorney's own research and analysis activities. However, by being aware of the dangers, and keeping abreast of changes in this rapidly developing area of law, you can minimize your risks while still benefiting significantly from these Standards.

The 1982 changes or additions to the Standards are set out in Appendix 4, along with a paper on the reasons for the changes or additions in Appendix 5. The proposed changes under discussion this year (1983) are listed in Appendix 6.

H. CONCLUSION

A title examiner must be an expert in almost every area of law: agency, corporate, partnership, divorce, probate, civil procedure, trust, commercial, and residential. The examiner needs all the help available to give their client the Certainty and Efficiency they demand, and to decide whether the title under examination is "a perfect title or clear title of record; and is

one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record".

The Standards serve as a single location where summaries of many of the laws on title questions are collected for easy reference for the novice and expert, they provide a continuing tool to educate the examiner as these laws inevitably change and they aid in providing a statement of the concensus of the State Bar in areas of the law where confusion might otherwise reign.

In conclusion let me concur with the Oklahoma Supreme Court when they declared, in Knowles v. Freeman, "we deem such Title Examination Standards and the annotations cited in support thereof to be persuasive."

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APPENDIX #1

TITLE INSURANCE STATUTE

36 O.S. §5001(c) - Qualifications of title insurers:

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

2-19-83

1983 TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY SECTION OF THE OKLAHOMA BAR ASSOCIATION
OFFICERS: CHAIRMAN: Richard Cleverdon, VICE CHAIRMAN: Kraettli Q. Epperson, SECRETARY: David Rowland

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H. Henley Blair	450	848-0382	1314 Sherwood Lane		Oklahoma City	73116
Dennis M. Botsko	918	587-4761	706 Oil Capitol Bldg.	507 South Main St.	Tulsa	74103
Thomas G. Braddock	405	482-3202	P. O. Box 898		Altus	73521
Gary C. Clark	918	592-5555	13th Floor	One Boston Plaza	Tulsa	74103
Richard Cleverdon	918	584-4716	202 West Eighth St.		Tulsa	74119
Stephen Wm. Davis	405	235-2591	1319 North Shartel		Oklahoma City	73103
John Wm. Doolin	405	248-8811	802 D. Avenue		Lawton	73501
William J. Doyle II	918	581-8200	Suite 400	201 West Fifth St.	Tulsa	74103
Kraettli Q. Epperson	405	525-6744	202 Central Park One	525 Central Park Drive	Oklahoma City	73105
John M. Gephart	918	485-3315	P. O. Box 385		Wagoner	74467
William A. Harrington	918	587-6601	Suite 201, Pythian Bldg.	432 South Boulder Ave.	Tulsa	74103
Leslie S. Hauger, Jr.	918	664-5811	5001 South Fulton Ave.		Tulsa	74135
John B. Heatly	405	232-0621	24th Floor	First National Center	Oklahoma City	73102
John W. Hron IV	405	762-1655	P. O. Drawer 1669		Ponca City	74602
Dwight C. Kouri	918	584-4136	2200 Fourth National Bldg.		Tulsa	74119
Annelle S. Lanford	918	749-4411	3414 South Yale		Tulsa	74135
D. Mark Livingston	405	321-2463	712 West Lindsey		Norman	73069
Jewell Russell Mann	918	587-6601	Suite 201, Pythian Bldg.	423 South Boulder Ave.	Tulsa	74103
Dan C. McClung	405	363-0800	P. O. Box 404		Blackwell	74631
Richard L. McKnight	405	233-2020	P. O. Box 1108		Enid	73702
Diane Jones Meier	405	232-6611	400 Fidelity Plaza		Oklahoma City	73102
Linda Morrissey	918	744-1230	5800 South Lewis	P. O. Box 7526	Tulsa	74105
Robert Nichols	918	582-3222	800 Grantson Bldg.	111 West Fifth St.	Tulsa	74103
Jeff Noble	405	251-7577	Suite 20	304 North Meridian	Oklahoma City	73107
Dr. Joseph F. Rarick	405	329-8800	O.U. Law Center	300 Timberdell Road	Norman	73019
Joe B. Reeves	405	355-2200	906 C. Avenue		Lawton	73501
Henry Rheinberger	405	235-7742	1800 Mid-America Tower		Oklahoma City	73102
Joe S. Rolston III	405	842-1120	Suite 111, Chase Park Cntr	4323 N.W. Sixty-third	Oklahoma City	73116
David P. Rowland	918	336-4550	P. O. Box 1436		Bartlesville	74005
Howard L. Schmidt	405	495-3321	4301 N. MacArthur Blvd.		Oklahoma City	73122
Stephen A. Schuller	918	583-7571	909 Kennedy Building		Tulsa	74103
Robert J. Scott	918	762-2535	P. O. Box 336		Pawnee	74058
Jannelle H. Steltzlen	918	492-6722	6636 South Jamestown Pl.		Tulsa	74136
James D. Tack, Jr.	405	235-9621	Fifth Floor	100 Park Avenue Bldg.	Oklahoma City	73102

APPENDIX #2

APPENDIX #3

Honorable Rodger A. Randle
State Senator

August 31, 1979
Opinion No. 79-230

The Attorney General is in receipt of your request for an opinion wherein you ask, in effect, the following question:

Where there is an alleged conflict between a title examination standard as promulgated by the Oklahoma Bar Association and the Oklahoma State Statutes, which should prevail?

Title examination standards are adopted by the Oklahoma Bar Association through its House of Delegates and are published as a part of the Oklahoma Statutes Annotated by the West Publishing Company as a convenience to the title examiners. The title examination standards are uniform interpretations for the application of the law that attorneys should use when examining titles. Title examination standards are not state statutes and, are not promulgated by the Legislature.

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.

JAN ERIC CARTWRIGHT
Attorney General of Oklahoma
VICTOR G. HILL, JR.
Assistant Attorney General

NEW AND REVISED TITLE EXAMINATION STANDARDS

ADOPTED AT THE 1982 OBA HOUSE OF DELEGATES ANNUAL MEETING

The House of Delegates of the Oklahoma Bar Association adopted the following new or revised Title Standards at the 1982 Annual Meeting of the Association. Because the pocket parts of Oklahoma Statutes Annotated probably will not be released until late 1983, these standards are published as adopted now.

1.5 JUDGMENT LIENS

Beginning October 1, 1978, the lien of a money judgment can only be perfected by the filing of a certified copy of the judgment in the office of the county clerk in the county in which the land under examination is located. However, the examiner should inform the client of the existence of any judgment even though not filed in the office of the county clerk, of which the examiner has notice. Judgments for alimony are discussed in Title Standard 12.1.

Authorities: 12 O.S.A. §706, *Gilbreath v. Smith*, 50 Okla. 42, 150 P. 719 (1915); *Long Bell Lumber Co. v. Etter*, 123 Okla. 54, 251 P. 997 (1927); *Flanagan v. Clark*, 156 Okla. 20, 11 P.2d 176 (1932).

Comment: Judgments entered upon the judgment docket, in the office of the district court clerk in the county in which the land is located, prior to October 1, 1978, unless extinguished by release or operation of law, constitute liens upon non-exempt land and should not be disregarded, Laws 1943, P. 34 §1.

The lien of a judgment rendered in the small claims division of the district court is perfected after October 11, 1982, when a Statement of Judgment is filed of record in the office of the county clerk in the county in which the land is located, 12 O.S.A. §1770. Between October 1, 1978, and October 11, 1982, the lien of a judgment rendered in the small claims division of the district court was not perfected until it was 1) entered upon the judgment docket in the office of the district court clerk of the county in which the judgment was

rendered and 2) filed of record in the office of the county clerk in the county in which the land is located, 12 O.S.A. §706; Laws 1977, c. 216, §1; Laws 1979, c. 83, §1. Prior to October 1, 1978, the lien of a judgment rendered in the small claims division of the district court was perfected when entered upon the judgment docket in the office of the clerk of the district court in the county in which the land is located, Laws 1975, c. 15, §1 & 2.

4.2 OIL AND GAS LEASES

The recording of a certificate supplied by the Corporation Commission under 17 O.S.A. §§167 and 168, renders a title marketable as against an unreleased oil and gas lease or a mineral or royalty conveyance or reservation for a term of years and as long thereafter as there is production, the primary term of which has expired prior to the date of the certificate, if the certificate covers all of the land described in the lease, mineral or royalty conveyance or reservation, as well as any additional land which may have been spaced or unitized by either the Corporation Commission or by recorded declaration pursuant to the lease or other recorded instrument as of the date of the expiration of the primary term.

Comment: Said Act originally applied only to oil and gas leases, as did the standard as originally adopted October, 1947. The Act was amended in 1951 so as to cover term mineral conveyances, as well as oil and gas leases; and the standard was then amended in November, 1954. By said Act, such certificates constitute *prima facie* evidence that no such oil or gas lease or term mineral conveyance is in force, which, if not refuted, will support a decree for specific performance of a contract to deliver a marketable title. The facts in *Wilson v. Shasta Oil Co.*, 171 Okl. 467, 43 P.2d 769, disclose that the Court only held that proof to establish marketability cannot be shown by an affidavit of non-development. *Beatty v. Baxter*, 208 Okl. 686, 258 P.2d 626, is deemed not to affect *prima facie* marketability as provided for in the statute.

Note: This standard does not apply to Osage County, where oil and gas operations are not under the control and supervision of the Corporation Commission.

Caveat: Since the Corporation Commission has been known to issue certificates of non-development when in fact a well has been drilled and not plugged, the cautious attorney will also advise his clients to satisfy themselves there is no well nor production upon any of said property and that the lease is not being kept alive by in lieu royalty payments or production not reported to the Corporation Commission.

8.1 TERMINATION OF JOINT TENANCIES AND LIFE ESTATES

In the event of the death of a life tenant or a joint tenant, the death is a fact which must be established by one of the following methods and such showing in the abstract shall satisfy the rule on marketability:

1. By filing an affidavit in the office of the county clerk as provided by 58 O.S.A. §912 by the surviving joint tenant as to a single tract of real property, any portion of which was held as homestead by husband and wife as joint tenants. The following must be filed with said affidavit:
 - A. Certified copy of the certificate of death of the joint tenant issued by the State Department of Public Health of Oklahoma or comparable agency of the place of death of said joint tenant.
 - B. Certification of the county assessor, of the county wherein the property is located, that all or part of the tract described was claimed as homestead by affiant and the decedent in the year of decedent's death. NOTE: Initial statute required certificate to be made by County Treasurer, during period October 1, 1974 through September 30, 1975.
 - C. In the case of affidavits filed on or after October 1, 1980, if such property was included in an estate where taxes are due under the provisions of 68 O.S.A. §804, a waiver or release of the estate tax lien by the Oklahoma Tax Commission as to such deceased person and property. If no such taxes are due then neither shall be required and the affidavit shall so state, pursuant to 58 O.S.A. §912(3) and 68 O.S.A. §815(d), effective October 1, 1980.
 - D. In the case of affidavits filed before October 1, 1980, a waiver or release of the state estate tax lien, unless made unnecessary by the ten (10) year statute of limitations.

Title 58 O.S.A. §912 is a procedural statute and may be relied upon as evidence of the death of a joint tenant and the identification of the surviving joint tenant irrespective of the date of death if such statute is otherwise applicable, even though the death may have occurred prior to the effective date of 58 O.S.A. §912.

2. In all other instances, the death is a fact which must be judicially determined by any of the following proceedings:

- A. By proceeding in the district court as provided in 58 O.S.A. §911; or,
- B. If the estate of the decedent was probated on other property, by showing the letter testamentary or of administration, 60 O.S.A. §74; or,
- C. In connection with an action brought in any court of record, where the court makes a valid judicial finding of death of the person having the interest as a life tenant or a joint tenant.

A waiver or release of the estate tax lien as to such joint tenant or life tenant must be obtained with any of said proceedings, unless the district court in which the estate of the decedent was probated enters an order releasing estate tax liability pursuant to 58 O.S.A. §282.1, effective October 1, 1980, or unless made unnecessary by the ten (10) year statute of limitations.

For the purposes of paragraphs B and C of Section 2 of this standard, filing with the county clerk is not necessary to establish marketability, if otherwise reflected in the abstract.

Comment: The provision in 58 O.S.A. §912(3), as amended in 1980 by Section 2, Chapter 286, Laws 1980, for the filing of an order releasing tax liability issued by the district court where the property was included in an estate where taxes are due under the provisions of 68 O.S.A. §804, is omitted from paragraph C of Section 1 of this standard, because there appears to be no statutory authority for the issuance of such an order. Title 58 O.S.A. §282.1, created by Section 6 of Chapter 286, Laws 1980, provides that the district court may issue an order releasing estate tax liability only "If it appears there is no possibility that estate tax is due under the provisions of Sections 801 *et seq.* of Title 68, . . ."

10.7 CONVEYANCES TO AND BY JOINT VENTURERS

- A. A joint venture is not a legal entity capable of holding title to real property in Oklahoma in the name of such joint venture.

Comment: A joint venture is not a partnership. If

the joint venturers organize as a partnership and the property is held in the name of the partnership, the usual rules regarding conveyances by the partnership apply.

- B. If a conveyance to a joint venture in its name alone appears in the chain of title, a conveyance should be obtained from the original grantor in favor of one or more of the members of the joint venture who are natural persons or legal entities capable of holding title to real property in Oklahoma. A deed or other conveyance may recite the trade name of the joint venture; however, such recital is not an essential element of the instrument.
- C. Since homestead or other marital rights may attach to the interests in real property of the joint venture held in the name of a married joint venturer, a deed, mortgage or other instrument of record for less than ten years which is executed by such married joint venturer should also be executed by the spouse of such venturer.

[Editor's Note: Chapter 10 now entitled "Conveyances Involving Partnerships" will be amended by adding the words, "And Joint Ventures."]

16.2 GIFT TAXES

The procedure for the enforcement of any gift tax which might be due the State of Oklahoma is that prescribed in the Uniform Tax Procedure Act, 68 O.S.A. §201 *et seq.*, under which no lien attaches until and unless a tax warrant or certificate is filed in the office of the county clerk of the county where the land is located. 68 O.S.A. §§230, 231 and 234.

Gifts made on or after January 1, 1982 are not subject to Oklahoma Gift Tax. The Gift Tax Code was repealed by Laws 1981, c. 237, §5, effective January 1, 1982.

17.3 FEDERAL ESTATE TAX SPECIAL LIEN ON QUALIFIED REALTY UNDER 26 U.S.C.A. §2032A

In the case of real property valued for federal estate tax purposes at its current use value pursuant to an election under 26 U.S.C.A. §2032A, the estate tax lien attributable to the enhanced value based upon highest and best use continues until satisfied, becomes unenforceable by reason of lapse of time, or until it is established to the satisfaction of the Secretary or his delegate that no further tax liability may arise under 26 U.S.C.A. §2032A(c) with respect to such property. Such lien continues notwithstanding the issuance of an estate tax closing letter and evidence of payment of tax shown thereon.

If no notice of lien has been filed in the office of the county clerk of the county where the land is located by

the Director of Internal Revenue or his delegate, no lien under 26 U.S.C.A. §2032A is perfected and no release shall be necessary.

Authority: 26 U.S.C.A. §§2032A and 6324B

Comment: Effective for estates of decedents dying after December 31, 1976, the Tax Reform Act of 1976 allows a personal representative to elect to value real property used for farming or in a closely held business, by the decedent or a member of his family on the date of the decedent's death, based on its current value as a farm or in the closely held business rather than on the basis of its potential "highest and best" use for other purposes. The "special use" valuation cannot reduce the gross estate by more than \$500,000. The Economic Recovery Tax Act of 1981 raised the amount by which the gross estate may be reduced to \$600,000 for estates of decedents dying in 1981, \$700,000 in 1982, and \$750,000 for 1983 on.

When the personal representative elects under §2032A to value real property used for farming or in a closely held business on the basis of its current value, a lien equal to the adjusted tax difference attributable to the interest attaches to the property. The adjusted tax difference is the difference between the estate tax liability and what the liability would have been had the election not been made. The amount attributable to the interest is an amount that bears the same ratio to the adjusted tax difference as the excess of the fair market value of the property over the special value bears to the excess of the fair market value of all qualified property over the special value of all qualified property. Qualified replacement property purchased after an involuntary conversion of qualified real property is also subject to the special lien.

The lien continues until the tax benefits are recaptured or potential liability ends, 26 U.S.C.A. §6324B.

The special lien can be subordinated if it is determined that the interests of the United States will be adequately secured after the subordination, 26 U.S.C.A. §6325(d)(3).

The estate tax closing letter does not disclose that an election under §2032A has been made; however, Internal Revenue Service generally files a lien for the adjusted tax difference.

[Editor's note, the present "Standard 17.3 The Federal Gift Tax Lien" will be renumbered "Standard 17.4."]

19.13 ABSTRACTING

Abstracting under the Marketable Record Title Act shall be sufficient when the following is shown in the abstract:

(a) The patent, grant or other conveyance from the government.

(b) The following title transactions occurring prior to the conveyance or other title transaction in (c) below: easements or interests in the nature of an easement; unreleased leases with indefinite terms such as oil and gas leases; unreleased leases with terms which have not expired; instruments or proceedings pertaining to bankruptcies; use restrictions or area agreements which are part of a plan for subdivision development; any right, title or interest of the United States.

(c) The conveyance or other title transaction constituting the root of title to the interest claimed, together with all conveyances and other title transactions of any character subsequent to said conveyance or other title transaction; or if there be a mineral severance prior to said conveyance or other title transaction, then the conveyance or other title transaction prior to said mineral severance, together with all conveyances and other title transactions of any character subsequent to said conveyance or other transaction.

(d) Conveyances, title transactions and other instruments recorded prior to the conveyance or other title transaction in (c) which are specifically identified in said conveyance or other title transaction or any subsequent instrument shown in the abstract.

(e) Any deed imposing restrictions upon alienation without the prior consent of the Secretary of the Interior or a federal agency, for example, a Carny Lacher deed.

(f) Where title stems from a tribe of Indians or from a patent where the United States holds title in trust for an Indian the abstract shall contain all recorded instruments from inception of title other than treaties except (1) where there is an Unallotted Land Deed or where a Patent is to a Freedman or Inter-Married White member of the Five Civilized Tribes, in which event only the Patent and the material under (b) (c) (d) (e) need be shown: and (2) Where a Patent is from the Osage Nation to an individual and there is of record a conveyance from the allottee and a Certificate of Competency, certificate as to degree of blood of the allottee and the material under (b) (c) (d) (e) need be shown.

The abstracter shall state on the caption page and in the certificate of an abstract compiled under this standard:

"This abstract is compiled in accordance with Oklahoma Title Standard No. 19.13 under 16 O.S.A., §§71-80."

Authorities: 16 O.S.A. §§71-80, 46 O.S.A. §203, and Oklahoma Title Standard 13.7

Comments: 1. The purpose of this Standard is to simplify title examination and reduce the size of abstracts.

2. Deeds, mortgages, affidavits, caveats, notices, estoppel agreements, powers of attorney, tax liens, mechanics liens, judgments, and foreign executions recorded prior to the first conveyance or other title transaction in (c) and not referred to therein or subsequent thereto and also probate, divorce, foreclosure, partition, and quiet title actions concluded prior to the first conveyance or other title transaction in (c) are to be omitted from the abstract.

3. Interests and defects prior to the first conveyance or other title transaction in (c) are not to be shown unless specifically identified. The book and page of the recording of a prior mortgage is required to be in any subsequent deed or mortgage to give notice of such prior mortgage, 46 O.S.A. §203 and Title Standard 13.7. Specific identification of other instruments require either the book and page of recording or the date and place of recording or such other information as will enable the abstracter to locate the instrument of record.

4. Abstracting under this standard should also be in conformity with Title Standard 18.6.

CHAPTER 20, BANKRUPTCIES

20.1 BANKRUPTCIES PRIOR TO OCTOBER 1, 1979

With respect to bankruptcy proceedings commenced prior to October 1, 1979, where title to real property is held by a bankrupt (sometimes referred to as "debtor") at the time of the commencement of bankruptcy proceedings, the title examiner should be furnished with and review copies of abstracts of the following instruments:

A. Where the property is claimed as exempt:

1. Order Approving Bond of Trustee;

2. Trustee's Report (or inventory) of exempt property setting forth the legal description of the property; and

3. Order Approving Trustee's Report of Exempt Property, or a certification by either the Clerk of the Bankruptcy Court or an abstracter that no objection to the Trustee's Report has been filed within 15 days of the filing of such report, or within such additional time as allowed by the bankruptcy court within such 15-day period;

Authority: Bankruptcy Rule 403(b)(c)(e); 31 O.S.A. §§2-3

B. Where the property, not claimed as exempt, is abandoned or disclaimed by the Trustee:

1. Order Approving Bond of Trustee;
2. Any of the following:
 - a. Application by the Trustee to disclaim the property as burdensome, and the Order granting the Application; or
 - b. Application by any other interested party for an order directing such disclaimer by the Trustee, and the Order granting the Application; or
 - c. An Order, entered upon the bankruptcy court's own initiative, directing the abandonment of such property by the Trustee;

and

3. Disclaimer by the Trustee setting forth the legal description of the property;

Authority: Bankruptcy Rule 608; 11 U.S.C.A. §44(g); *Bowman v. Towery*, 248 P.2d 1030 (Okla. 1952)

C. Where the property is not claimed as exempt and is sold by the Trustee:

1. Order Approving Trustee's Bond, which should be recorded with the County Clerk where the property is located; and

2. All of the following instruments:

- a. Petition to sell real property;
- b. Notice to creditors of such sale; such notice must be given at least 10 days prior to the sale, unless a shorter period is evidenced by an order of the bankruptcy court. Such notice (or the waiver thereof) must be shown by:

(1) Any of the following:

- (a) If notice was given by mailing, an affidavit or certificate by the bankruptcy court clerk of the mailing of notice to creditors, or
- (b) If notice was given by publication, an affidavit or certificate of such publication notice, or

(c) If notice was given by both mailing and publication, an affidavit or certificate by the bankruptcy court clerk of such mailing, and an affidavit or certificate of such publication notice;

(2) Or an order by the bankruptcy court for immediate sale without notice;

c. An affidavit or certificate of notice to the public of the date, time, place and subject of the sale, in accordance with local bankruptcy court rules. (Such notice is not required for private sales; however, if a private sale is shown, the examiner must be furnished with the order by the bankruptcy court authorizing that such sale be private.);

d. Order of sale by the bankruptcy court;

e. Report or return of sale, showing that such sale was conducted in accordance with the order of sale; and

f. Order confirming sale.

3. Trustee's deed, or deed by debtor in possession, which must be filed for record in the office of the county clerk of the county in which the property is located.

Authority: Bankruptcy Rules 203 and 606; 11 U.S.C.A. §§44(g), 110(f) and 110(g)

20.2 BANKRUPTCIES ON OR AFTER OCTOBER 1, 1979

With respect to bankruptcy proceedings commenced on or after October 1, 1979, where title to real property is held by a debtor at the time of the commencement of bankruptcy proceedings, the title examiner should be furnished with and review the following instruments (in addition to a copy or abstract of the bankruptcy petition):

A. Where the property is scheduled and claimed by the debtor as exempt, and no objection to such claim of exemption has been sustained by the bankruptcy court:

1. The Schedule of Real Property ("Schedule B-1") and the Schedule of Exempt Property ("Schedule B-4"),

showing the claim of exemption for the property, or a copy or abstract of any other such claim of exemption by a dependent of the debtor on behalf of the debtor; and

2. A certificate by an abstractor or the appropriate bankruptcy court clerk that no objections to such claim of exemption have been filed; if such an objection has been so filed, the examiner should also be furnished with and review a copy or abstract of any order by the bankruptcy court overruling or otherwise resolving such objection;

Authority: 11 U.S.C.A. §§521 and 522; Bankruptcy Rules 103 and 108; 3 *Collier on Bankruptcy* (15th Ed.) §522.26

B. Where the property is affirmatively abandoned by the bankruptcy trustee or by a debtor in possession:

1. If abandoned by a bankruptcy trustee, a copy of the order by the bankruptcy court appointing the trustee, the trustee's qualifying bond, and the bankruptcy court's order approving the bond; or if abandoned by a debtor in possession, a certificate by an abstractor or by the appropriate bankruptcy court clerk that no trustee was appointed in the case and

2. Either

a. A copy or abstract of the notice by the trustee or debtor in possession, of his or her intention to abandon the property, and a certificate by the abstractor or the appropriate bankruptcy court clerk that no objections to such abandonment have been filed within the time allowed by such notice in accordance with the Rules of Bankruptcy Procedure and/or local court rules; or

b. If the abandonment is pursuant to a request of a party in interest, a copy or abstract of the order by the bankruptcy court authorizing or directing such abandonment, after such notice and hearing as required by the bankruptcy court, by the Rules of Bankruptcy Procedure, and/or by local court rules;

Authority: 11 U.S.C.A. §§102, 322 and 554; 4 *Collier, Id.* §554.02

C. Where non-exempt property is not administered before the closing of the bankruptcy case, and, unless otherwise ordered by the bankruptcy court, is therefore deemed abandoned:

1. A copy or abstract of the order discharging the trustee and closing the estate; and

2. A copy or abstract of the bankruptcy proceedings showing that, or a certificate by the abstractor or the appropriate bankruptcy court clerk that, the property was scheduled by the debtor and was not administered at or before the closing of the case;

Authority: 11 U.S.C.A. §§350 and 554; 4 *Collier, Id.* §554.02

D. Where the property is sold by the bankruptcy trustee or by a debtor in possession (other than in the ordinary course of business of the debtor):

1. If sold by a bankruptcy trustee, a copy or abstract of the order by the bankruptcy court appointing the trustee, the trustee's qualifying bond, and the bankruptcy court's order approving the bond; or if sold by a debtor in possession, a certificate by the abstractor or the appropriate bankruptcy court clerk that no trustee was appointed in the case;

2. A copy or abstract of the notice of such sale, in accordance with the Bankruptcy Code, the Rules of Bankruptcy Procedure, and/or local court rules, and a copy or abstract of the bankruptcy proceedings showing that, or a certificate by the abstractor or the appropriate bankruptcy court clerk that, no objections to such sale were raised, or if such objections were raised, a copy or abstract of the order overruling such objections and authorizing the sale; and

3. A copy or abstract of the conveyance by the trustee;

Authority: 11 U.S.C.A. §§102, 322, 363(b), and 1107; *Collier, Id.* §363.03

E. Where the property is sold in the ordinary course of business of the debtor, unless otherwise ordered by the Court:

1. If the property is sold by the trustee:

a. A copy or abstract of the order by the bankruptcy court appointing the trustee, the trustee's qualifying bond, and the bankruptcy court's order approving the bond;

b. A copy or abstract of the order authorizing the trustee to operate the debtor's business, and

c. A copy or abstract of the conveyance by the trustee; or

2. If the property is sold by a debtor in possession, a certificate by the abstractor or the appropriate bankruptcy court clerk that no trustee was appointed in the case, and a copy or abstract of the conveyance by the debtor.

Authority: 11 U.S.C.A. §§363(c), 721, 1108 and 1304(b); 2 *Collier, Id.* §363.04; 4 *Collier, Id.* §732.04[1]; 5 *Collier, Id.* §§1108.03 and 1304.01[3].

TITLE EXAMINATION STANDARDS COMMITTEE
OF THE
REAL PROPERTY SECTION

APPENDIX #5

Presented February 11, 1983
By Kraettli Q. Epperson
To The Oklahoma City Title
Attorneys Association

A DISCUSSION OF THE 1982 NEW AND REVISED
TITLE EXAMINATION STANDARDS*

INTRODUCTION

Each year the Title Examination Standards Committee of the Real Property Section of the Oklahoma Bar Association undertakes a study of the existing Title Examination Standards in light of new laws and new court or Attorney General interpretations of existing laws. In 1982 the Committee approved nine (9) new or revised Title Examination Standards which were published in the November, 1982 end-of-the-month issue of the Oklahoma Bar Journal for comment by the members of the Bar at large. Five (5) of the Standards were revisions and four (4) were new. The nine (9) Standards were presented to and approved by both the Real Property Section and the House Of Delegates Of The Oklahoma Bar Association at the Annual Meeting of the Oklahoma Bar Association in December, 1982.

In the discussion section below (1) each new or revised Standard is identified by number and heading, (2) the substantive aspects of each new or revised Standard is described and in some instances quoted in part or in whole, and (3) the reasons for the

*New and Revised Title Examination Standards Adopted At The 1982 OBA House Of Delegates Annual Meeting.

new or revised Standard are presented. The complete text of the 1982 New and Revised Title Examination Standards as adopted are included herein as an attachment.

DISCUSSION

1. 1.5 Judgment Liens (Revision)

The portion of the former Standard which dealt with the steps to perfect the lien of a small claims judgment only dealt with the procedures for the post-October 1, 1978 and pre-October 11, 1982 period when perfection was achieved, according to the old Standard, as follows:

The lien of judgment rendered in the small claims division of the district court is not perfected unless 1) it is entered upon the judgment docket in the office of the district court clerk of the county in which judgment is rendered and 2) filed of record in the office of the county clerk in the county in which the land is located.

The revised Standard explained the lien perfection procedures for the pre-October 1, 1978 and post-October 11, 1982 periods, as well as the interim period:

The lien of a judgment rendered in the small claims division of the district court is perfected after October 11, 1982, when a Statement of Judgment is filed of record in the office of the county clerk in the county in which the land is located, 12 O.S.A. §1770. Between October 1, 1978, and October 11, 1982, the lien of a judgment rendered in the small claims division of the district court was not perfected until it was 1) entered upon the judgment docket in the office of the district court clerk of the county in which the judgment was rendered and 2) filed of record in the office of the county clerk in the county in which the land is located, 12 O.S.A. §706; Laws 1977, c. 216, §1; Laws 1979, c. 83, §1. Prior to

October 1, 1978, the lien of a judgment rendered in the small claims division of the district court was perfected when entered upon the judgment docket in the office of the clerk of the district court in the county in which the land is located, Laws 1975, c. 15, §1 & 2.

2. 4.2 Oil and Gas Leases (Revision)

The former Standard encouraged reliance upon certificates of non-development from the Oklahoma Corporation Commission to render a title marketable as against an unreleased oil and gas lease or a mineral or royalty conveyance. The revised Standard adds a mineral or royalty reservation to this list, thus recognizing the true state of the law.

The revised Standard also moves part of the "Caveat" up to the body of the Standard for greater visibility. The portion moved concerns the cautionary statement that to be relied on the certificate of non-development must cover not only all the land described in the lease, mineral or royalty conveyance or reservation, but also cover:

...any additional land which may have been spaced or unitized by either the Corporation Commission or by recorded declaration pursuant to the lease or other recorded instrument as of the date of the expiration of the primary term.

3. 8.1 Termination of Joint Tenancies and Life Estates (Revision)

The revised Standard added a needed notation to Paragraph 1B which now points out that between October 1, 1974

and September 30, 1975, the County Treasurer instead of the County Assessor was authorized to provide the certification of homestead used as part of the documentation to terminate by affidavit a joint tenancy on homestead real property.

The revised Standard in Paragraph 1C clarified the effective date of the act by acknowledging that a release of the Oklahoma estate tax lien must be secured only "In the case of affidavits filed on or after October 1, 1980,...".

The revised Standard deletes from Paragraph 1C the option of securing "a copy of an order releasing tax liability issued by the district court" because:

Comment: The provision in 58 O.S.A. §912(3), as amended in 1980 by Section 2, chapter 286, Laws 1980, for the filing of an order releasing tax liability issued by the district court where the property was included in an estate where taxes are due under the provisions of 68 O.S.A. §804, is omitted from paragraph C of Section 1 of this Standard, because there appears to be no statutory authority for the issuance of such an order. Title 58 O.S.A. §282.1, created by Section 6 of Chapter 286, Laws 1980, provides that the district court may issue an order releasing estate tax liability only "If it appears there is no possibility that estate tax is due under the provisions of Sections 801 et seq. of Title 68,..."

The revised Standard corrects Paragraph 1D by declaring that "a waiver or release of the state estate tax lien" is necessary "In the case of affidavits filed before October 1, 1980," instead of "For deaths occurring before October 1, 1980" (emphasis added). This is the true situation since even if a

death occurs before the effective date of the act, no release is necessary so long as the date of the affidavit is after the act's effective date.

The revised Standard's first unnumbered paragraph immediately after Paragraph 2C includes a note that when using non-affidavit probate procedures that the need to secure a waiver or release of the state estate tax lien cannot be avoided:

...unless the district court in which the estate of the decedent was probated enters an order releasing estate tax liability pursuant to 58 O.S.A. §282.1, effective October 1, 1980, or unless made unnecessary by the ten (10) year statute of limitations.

The revised Standard's 2nd unnumbered paragraph immediately after Paragraph 2C clarifies that there is a need for certain items in the abstract evidencing the fact that a probate or other court action was brought to prove the death of the joint tenant or holder of a life estate by providing:

For the purposes of paragraphs B and C of Section 2 of this Standard, filing with the county clerk is not necessary to establish marketability, if otherwise reflected in the abstract. (emphasis added).

instead of:

For the purposes of B and C of section 2 of this Standard, filing with the county clerk is not necessary to establish marketability after ten years from the date on which the decree of distribution or judicial determination was filed in the office of the court having jurisdiction.

4. 10.7 Conveyances to and from Joint Ventures (New)

This Standard on Joint Ventures is completely new and deals both with the central issue of whether a joint venture can hold title to real property and with the practical aspects of how should the joint venturers originally acquire title or reconvey to third parties.

A general statement is provided in Paragraph A:

A. A joint venture is not a legal entity capable of holding title to real property in Oklahoma in the name of such joint venture.

Specific guidance is provided in the new Standard on how title should be held originally or cured if conveyed to the name of the joint venture itself. Paragraphs B and C state:

B. If a conveyance to a joint venture in its name alone appears in the chain of title, a conveyance should be obtained from the original grantor in favor of one or more the members of the joint venture who are natural persons or legal entities capable of holding title to real property in Oklahoma. A deed or other conveyance may recite the trade name of the joint venture; however, such recital is not an essential element of the instrument.

C. Since homestead or other marital rights may attach to the interests in real property of the joint venture held in the name of a married joint venturer, a deed, mortgage or other instrument of record for less than ten years which is executed by such married joint venturer should also be executed by the spouse of such venturer.

5. 16.2 Gift Taxes (Revised)

The first revision to this Standard clarifies the former wording whereby "no lien attaches until and unless a tax warrant or certificate is filed as provided therein" (68 O.S.A. 201 et seq) (emphasis added), by replacing the language "as provided therein" with "in the office of the county clerk of the county where the land is located".

The second revision reflects the repeal of the Gift Tax Code by Laws 1981, c. 237, §5, so that the New Standard says "Gifts made on or after January 1, 1982 are not subject to Oklahoma Gift Tax".

6. 17.3 Federal Estate Tax Special Lien on qualified Realty Under 26 U.S.C.A. §2032A (New)

The former Standard 17.3 The Federal Gift Tax Lien was renumbered 17.4 and this new Standard 17.3 inserted. As provided in the New Standard "When the personal representative elects under 26 U.S.C.A. §2032A to value real property used for farming or in a closely held business on the basis of its current value, a lien equal to the adjusted tax difference attributable to the interest attaches to the property." However, "If no notice of lien has been filed in the office of the county clerk of the county where the land is located by the Director of Internal Revenue or his delegate, no lien under 26 U.S.C.A. §2032A is perfected and no release shall be necessary".

7. 19.13 Abstracting (Revised)

The former Standard was more restrictive than the Marketable Record Title Act required since the Standard specified that the Root of Title had to be a "warranty deed". The revised Standard more closely reflects the language of the statutes by using the language "The conveyance or other title transaction constituting the root of title to the interest claimed" in Paragraph (c).

8. 20.1 Bankruptcies Prior to October 1, 1979 (New)

In order to provide minimum title examination Standards for attorneys dealing with real property formerly or currently held by bankrupts, a new Standard was created. The subheadings cover (A) exempt property, (B) abandoned or disclaimed property and (C) property sold by the trustee.

9. 20.2 Bankruptcies on or After October 1, 1979
(New)

The new bankruptcy laws prescribed different procedures and documentation for handling the disposition of real property and thus created the need for a new Title Examination Standard. The new Standard has the following subheadings: (A) exempt property, (B) affirmatively abandoned property, (C) unadministered but deemed abandoned property, (D) property sold by the trustee or debtor in possession (other than in the ordinary course of business of the debtor) and (E) property sold in the ordinary course of business of the debtor.

This new Standard is based on the assumption that either the new real property procedures will be found to be valid despite the unconstitutionality of other portions of the law, or the new real property procedures will be reenacted in the identical form when new replacement legislation is enacted.

APPENDIX #6

1983 TITLE EXAMINATION STANDARDS
UNDER DISCUSSION

1. 10.6 No Marital Rights In Partnership Real Property - Make minor typographical errors in the Standard: change "attached" to "attach", and "examined" to "examiner".
2. 18.6 Abstracting - Add clarifying language on when estate tax clearances can be omitted by the abstractor from the probate: after "estate tax clearances" in subpart (b) add "(unless barred or not required by 58 OSA §912(3) or 68 OSA §§811(d), 815(d))".
3. Use of Powers of Attorney - New Standard dealing with limitations, if any, on the reliance on Powers of Attorney discovered by examiners on instruments of record.
4. Handling Marital Interest Rights - New Standard describing when and how marital status should be disclosed on instruments of record.
5. Lot Split Approval - New Standard on the effect of Lot Split Approval Statutes and ordinances on the marketability of real property.
6. Divorce Decree Judgment Liens - Clarification of the necessity of divorce decrees to be filed with the County Clerk to perfect a money judgment lien or a judge-made lien on specific real property.
7. Fictitious Named Partnerships - Clarification of the impact on marketability of the failure to file Certificates of Fictitious Named Partnerships.
8. 19.13(c) Abstracting - Clarification of the 30-year abstract with regard to showing mineral conveyances recorded prior to the root of the title.
9. 4.4 Corrective Instruments - Add a recent supporting Oklahoma Supreme Court Case to this Standard's list of Authorities (Knowles v. Freeman).
10. 1.1(d) Recertification Unnecessary - Checking whether the 2-year tort, 3-year oral contract, 5-year written contract or 5-year bond statute of limitation apply on an abstractor's error.

11. Probate Mental Health - New Standard discussing when you need to be concerned about a probate mental health case or a competency hearing due to the new laws on presumed competency and restricted access to mental health files.
12. Defective Plats - New Standard describing what methods are acceptable to cure defective plats.
13. Defective Condos - New Standard describing what methods are acceptable to cure defective condominium declarations.
14. Trusts - New Standard describing what an examiner must see to feel comfortable with a conveyance from a trust.
15. 19.13(c) Abstracting - Adding to this Standard's authority a recent Oklahoma Supreme Court Case holding that a fraudulent document cannot constitute a "root of title".
16. 20.1 and 20.2 Bankruptcies - Corrections needed based on comments from Bankruptcy Judges and practicing attorneys due to Local Rules. Addition of Comments on the need for Trustees in Bankruptcy to file Lis Pendens Notices in all counties where the debtor has real property to prevent BFP's from acquiring an interest superior to the Trustee's interest.