

# **THE ABTRACTER AND THE TITLE EXAMINER**

**BY:**

**KRAETTLI Q. EPPERSON**

**AMES, ASHABRANNER, TAYLOR,  
LAWRENCE, LAUDICK & MORGAN**

**6440 Avondale Drive, Suite 200  
Oklahoma City, Oklahoma 73116  
(405) 840-2470**

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## AUTHOR'S BIOGRAPHY

### KRAETTLI Q. EPPERSON

**POSITION:** Partner with the law firm of Ames, Ashabranner, Taylor, Lawrence, Laudick & Morgan.

**EDUCATION:** University of Oklahoma [B.A. (Poli.Sci.) 1971]; State University of New York at Stony Brook [M.S. (Urban and Policy Sciences) 1974]; and Oklahoma City University [J.D. (Law) 1978].

**MEMBERSHIPS:** Oklahoma County, Oklahoma State and American Bar Associations.

**POSITIONS:** ABA Conveyancing Committee (current co-chairman, former vice-chairman); ABA State Customs and Practices Sub-Committee (current chairman); OBA Real Property Section (former chairman, former director); OBA Title Examination Standards Committee (current co-chairman, former vice-chairman); OBA Legislative Liaison Committee (former co-chairman, current member); and The Oklahoma City Title Attorneys Association (former president, former director).

#### SPECIAL

**EXPERIENCE:** Adjunct professor for Oklahoma City University School of Law teaching "Oklahoma Land Titles" and "Property II (Conveyancing)" courses; previously served as title examiner and commercial loan closer with Lawyers Title of Oklahoma City, Inc., and as general counsel of American First Land Title Insurance Co. (now American Guaranty Title Co.) of Oklahoma City, Oklahoma.

**PUBLICATIONS:** Co-author of: "Title Examination Standards in America: A Status Report", Probate and Property, ABA Real Property, Probate and Trust Magazine, Sept./Oct. 1990; and "Oklahoma Title Examination Standards and Curative Acts Relating to Oil and Gas Interests", 24 Tulsa Law Journal 548 (Summer 1989); author of: "Judgment Lien Creation Now Requires a Judgment Affidavit", 59 Oklahoma Bar Journal 3643 (December 1988); "UCC Fixtures Filings Require an Acknowledgement", 55 Oklahoma Bar Journal 695 (March 1984); "Abstract Certificate Officially Changes", 54 Oklahoma Bar Journal 1713 (June 1983); "Lender's Mineral Title Insurance: A Mini-Primer", 53 Oklahoma Bar Journal 3089 (December 1982); and "The Title Standards Committee: A Status Report", 53 Oklahoma Bar Journal (July 1982).

#### SPECIAL

**HONORS:** Who's Who in American Law, Sixth Edition, 1990-1991; Oklahoma Bar Association 1990 Earl Sneed Continuing Legal Educator Award.

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## TITLE INSURERS

## 36 § 5001

cent (25%) of the direct written premium of outstanding liability less monies held by the insurer in trust to pay losses from bail.

C. Each insurer writing bail bonds in this state shall file monthly reports based upon the previous month's activity with the Commissioner and on forms prescribed by the Commissioner within fifteen (15) days after the end of each preceding month, which shall include the following information and such other information as the Commissioner deems necessary:

1. Amount of deposit held by the Commissioner with a list of the securities available and their current valuation;
2. Bail bond premium volume for this state;
3. Administrative action, if any, taken by other states against the insurer;
4. List of collateral held by the insurer stating the location of collateral, the corresponding county involved, the case number and the bondsman soliciting the bond;
5. Loss ratio;
6. Outstanding liability; and
7. A list of agents or bondsmen whose contracts have been canceled.

Laws 1987, c. 211, § 2, eff. Nov. 1, 1987.

### Library References

Bail ⇐60.  
WESTLAW Topic No. 49.

C.J.S. Bail; Release and Detention  
Pending Proceedings §§ 3, 101.

## ARTICLE 50. TITLE INSURERS

### Tables

*Disposition and Derivation Tables are provided at the beginning of this Title, providing a means of tracing repealed subject matter into the Insurance Code and, on the other hand, of searching out the source of the Code sections.*

### § 5001. Qualifications of title insurers

A. Any foreign or domestic stock insurer authorized by its corporate charter to engage in business as a title insurer shall be entitled to the issuance of a certificate of authority as a title insurer in this state upon meeting the applicable requirements of Article 6 (Authorization of Insurers and General Requirements) <sup>1</sup>, except that existing title insurers may have their certificate of authority re-

newed by maintaining surplus in regard to policyholders of not less than Five Hundred Thousand Dollars (\$500,000.00).

B. A person engaged in the business of preparing or issuing abstracts of, but not guaranteeing or insuring, title to property, or a person acting only as agent for a title insurer, shall not be deemed to be a title insurer.

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 or by an attorney licensed to practice in the State of Oklahoma duly appointed as agent of a title insurance company, provided that no policy of title insurance shall be issued in the State of Oklahoma except after examination of a duly-certified abstract of title prepared by a bonded and licensed abstractor as defined herein.

Laws 1957, p. 407, § 5001, operative July 1, 1957. Laws 1959, p. 138, § 1, eff. June 30, 1959; Laws 1980, c. 185, § 7, eff. Oct. 1, 1980.

<sup>1</sup> Section 601 et seq. of this title.

### Historical and Statutory Notes

#### Source:

Section 1, Article 20, Arizona Insurance Code (A.R.S. § 20-1563).

duly certified abstract of title prepared by a bonded and licensed abstractor as defined herein".

#### Comment:

Sections 5001 to 5005, inclusive, are new material. There were no provisions on title insurers in the former law. Above § 5001 sets out qualifications for title insurers. Policies of title insurance must be countersigned by some person actively engaged in the abstract of title business in Oklahoma.

The 1980 amendment, in subsection A, substituted "except that existing title insurers may have their certificate of authority renewed by maintaining surplus in regard to policyholders of not less than Five Hundred Thousand Dollars (\$500,000.00)" for "together with the following additional requirements:" and deleted former paragraph 1 which read:

#### Amendments:

The 1959 amendment, in subsection C, added ", 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

"The insurer shall have and maintain paid-in capital of not less than One Hundred Thousand Dollars (\$100,000.00), and shall, when first so authorized in Oklahoma, have surplus of not less than Fifty Thousand Dollars (\$50,000.00)."

; and in subsection C, following "Title 1", deleted ", Oklahoma Statutes Annotated,".

### Cross References

Capital requirements, see § 610 of this title.

Limit of risk, see § 710 of this title.

Stock insurer, title insurer as, see § 609 of this title.

Title guaranty by trust companies, see title 6, § 1001.

Title insurance, definition, see § 709 of this title.

## Law Review Commentaries

Does title insurer owe  
duty to any but its insured? 7 Okl.City  
U.L.Rev. 293 (1982).

Lender's mineral title insurance:  
Mini-primer. Kraettli Q. Epperson. 53  
Okl.B.J. 3089 (1982).

## Library References

Insurance ⇐5.  
WESTLAW Topic No. 217.  
C.J.S. Insurance §§ 69, 1413.

## WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

## Notes of Decisions

Abstract of title 1  
Examination of abstract 2

### 1. Abstract of title

A "duly-certified abstract of title" for purposes of this section is an abstract brought to date after the title policy is ordered which contains all the pertinent instruments affecting the real estate and concluding with the certificate of the abstractor verifying its accuracy. Op. Atty.Gen. No. 83-281 (May 14, 1984).

### 2. Examination of abstract

The examination of the abstract pursuant to this section must be conducted by a licensed attorney. Op. Atty.Gen. No. 83-281 (May 14, 1984).

The abstract examined pursuant to this section need only be done once prior to the issuance of the title insurance company's commitment and does not have to be brought to date, re-certified and examined again to include the documents and instruments executed at the closing. Op. Atty.Gen. No. 83-281 (May 14, 1984).

This section requires an examination of a duly certified abstract of title as a prerequisite to the issuance of a title insurance policy in the State of Oklahoma, and this requirement is not satisfied by examination or certification merely of copies of documents found in a search of the title record. Op. Atty. Gen. No. 82-46 (March 5, 1982).

## § 5002. Investments of title insurers

A. A domestic title insurer shall invest its capital accumulations, up to the sum of One Hundred Thousand Dollars (\$100,000.00), in capital investments as defined in subsection A of Section 1606 of Article 16 (Investments), but subject to the exception in subsection B, below.

B. A domestic title insurer may invest its capital and accumulations in excess of One Hundred Thousand Dollars (\$100,000.00) in such investments as are made eligible for funds of domestic insurers by Article 16; except, that any such insurer may invest an amount not exceeding fifty percent (50%) of its combined capital and surplus in the preparation and purchase of material or plants or both necessary to enable it to engage in the business of title insurance, and such materials and plants shall be deemed to be capital funds investments and shall be valued as the actual cost thereof.

## 36 § 5002

## INSURANCE

C. Subsections B and C of Section 1606 of Article 16 shall not apply to domestic title insurers, nor shall such insurers be subject to the limitations as to amount invested in real estate for home office and branch office purposes contained in subdivision A of Section 1624 of Article 16.

Laws 1957, p. 407, § 5002, operative July 1, 1957.

### Historical and Statutory Notes

#### Source:

Section 2, Article 20, Arizona Insurance Code (A.R.S. § 20-1564).

#### Comment:

New material. Section outlines exceptions for title insurers on investments.

### Cross References

Required capital investments and class limitations, see § 1606 of this title.

### Library References

Insurance ⇌8.  
WESTLAW Topic No. 217.  
C.J.S. Insurance §§ 72, 96.

## § 5003. Additional powers of title insurers

A title insurer may engage in such other business not inconsistent with the business of issuing title insurance policies as may be authorized by its corporate charter.

Laws 1957, p. 408, § 5003, operative July 1, 1957.

### Historical and Statutory Notes

#### Source:

Section 3, Article 20, Arizona Insurance Code (A.R.S. § 20-1565).

#### Comment:

New material.

### Law Review Commentaries

Does title insurer qua title insurer owe duty to any but its insured? 7 Okl.City U.L.Rev. 293 (1982).

## § 5004. "Title insurance policy" defined

A "title insurance policy" is any written instrument purporting to show the title to real or personal property or any interest therein or encumbrance thereon, or to furnish such information relative to real property, which written instrument in express terms purports to insure or guarantee such title or the correctness of such information.

Laws 1957, p. 408, § 5004, operative July 1, 1957.

## REPEALS

### Historical and Statutory Notes

**Source:**

Section 5, Article 20, Arizona Insurance Code (A.R.S. § 20-1505).

**Comment:**

New material.

### Cross References

Title insurance, definition, see § 709 of this title.

### Law Review Commentaries

Lender's mineral title insurance:  
Mini-primer. Kraettli Q. Epperson. 53  
Okl.B.J. 3089 (1982).

## § 5005. Exemptions and application of other laws

A. Title insurers shall be governed by this article and, to the extent not modified by or inconsistent with the provisions of this article or the provisions of this Code made applicable to such insurers, by the general laws of this state governing corporations organized for profit.

B. To the extent not modified by the provisions of this article, title insurers shall be subject to and governed by the other applicable provisions of this Code.

C. No new insurance law hereafter enacted shall be deemed to apply to title insurers unless they be expressly referred to therein. Laws 1957, p. 408, § 5005, operative July 1, 1957.

### Historical and Statutory Notes

**Source:**

Section 6, Article 20, Arizona Insurance Code (A.R.S. § 20-1561).

subject to the corporation code and to the insurance code.

**Comment:**

New material. This section outlines the extent to which title insurers are

ARTICLE 51. RESERVED

ARTICLE 52. RESERVED

ARTICLE 53. REPEALS

### Tables

*Disposition and Derivation Tables are provided at the beginning of this Title, providing a means of tracing repealed subject matter into the Insurance Code and, on the other hand, of searching out the source of the Code sections.*

of duties imposed upon the Office of the State Auditor and Inspector by law. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment. The State Auditor and Inspector shall at the close of each fiscal year pay into the General Revenue Fund of the state any unencumbered balance remaining in said revolving fund in excess of Five Hundred Thousand Dollars (\$500,000.00).

Laws 1970, c. 43, § 5, eff. March 3, 1970. Laws 1979, c. 30, § 153, eff. April 6, 1979; Laws 1985, c. 304, § 10, eff. July 24, 1985.

<sup>1</sup> Section 227.10 et seq. of this title.

#### Historical Note

The 1979 amendment substituted "State Auditor" for "State Examiner" and required that disbursements from the revolving fund be made upon warrants by the State Treasurer against claims submitted to the Director of State Finance.

The 1985 amendment stated that the fund shall be a continuing fund not sub-

ject to fiscal year limitations; that the fund included fees received pursuant to the abstractors law; and provided that all monies accruing to the fund were appropriated and could be budgeted and expended for necessary expenses.

Section 7 of Laws 1970, c. 43 was a severability provision.

### OKLAHOMA ABSTRACTORS LAW

#### § 227.10. Short title

Sections 1 through 20 of this act<sup>1</sup> shall be known and may be cited as the "Oklahoma Abstractors Law".

Laws 1984, c. 163, § 1, eff. Nov. 1, 1984.

<sup>1</sup> Section 227.10 et seq. of this title.

#### Historical Note

Section 22 of Laws 1984, c. 163 provides for an effective date.

#### Title of Act:

An Act relating to abstracting; establishing the Oklahoma Abstractors Law; providing for short title; defining terms; charging the state auditor and inspector with certain administrative responsibilities; providing for powers and duties of the state auditor and inspector; authorizing certain hearings and providing procedures therefor; providing for licenses, permits, and certificates of authority and procedures therefor; providing for exceptions to certain requirements; requiring abstracts or copies be furnished without unnecessary delay;

establishing penalty for refusal to deliver abstract; excluding abstracts on oil, gas and other minerals from certain provisions of act; providing for fees and bonds; requiring certain books or indexes; prohibiting certain acts and providing penalties; establishing certain rights and responsibilities of persons regulated by the Oklahoma Abstractors Law; requiring statement of charges and uniformity of fees; providing for codification; repealing 1 O.S.1981, sections 1, as amended by section 1, chapter 63, O.S.L.1983, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 (1 O.S.Supp. 1983, section 1), and 19 O.S.1981, section 628; and providing an effective date. Laws 1984, c. 163.

**Notes of Decisions****1. Validity**

Abstractors Law, 74 O.S.Supp.1984,  
§ 227.10 et seq., on its face, does not

violate Const. Art. 10, § 17, which pro-  
hibits giving aid to private companies.  
Op.Atty.Gen. No. 85-30 (Aug. 15, 1985).

**§ 227.11. Definitions**

As used in the Oklahoma Abstractors Law: <sup>1</sup>

1. "Abstract of title" is a compilation in orderly arrangement of the materials and facts of record, in the office of the county clerk and court clerk, affecting the title to a specific tract of land issued pursuant to a certificate certifying to the matters therein contained.

2. "Abstract plant" shall consist of a set of records in which an entry has been made of all documents or matters which legally impart constructive notice of matters affecting title to real property, any interest therein or encumbrances thereon, which are filed or recorded in the offices of the county clerk and the court clerk in the county for which such abstract plant is maintained. Such records shall consist of:

- a. an index in which notations of or references to any documents that describe the property affected are included, according to the property described or in which copies or briefs of all such documents that describe the property affected are sorted and filed according to the property described, which is compiled from the instruments of record affecting real property in the county offices and not copied or reproduced from any county index; and
- b. an index or files in which all other documents, pending suits affecting real property and liens, except ad valorem taxes and special assessments, are posted, entered, or otherwise included, according to the name of the parties whose title to real property or any interest therein or encumbrances thereon is affected, which is compiled from the instruments of record affecting real property in the county offices and not copied from any county index.

3. "Certificate of authority" is the authorization to engage in the business of abstracting in a county in this state, granted to a person, firm, corporation, or other entity, by the State Auditor and Inspector.

4. "Permit" is the authorization to build an abstract plant in a specific county.

5. "Abstract license" is the authorization for a person working for a holder of a certificate of authority to search and remove from

county offices county records, summarize or compile copies of such records, and issue the abstract of title.

Laws 1984, c. 163, § 2, eff. Nov. 1, 1984.

<sup>1</sup> Sections 227.10 to 227.29 of this title.

#### Library References

Abstracts of Title  $\Leftrightarrow$  1.

C.J.S. Abstracts of Title §§ 2 to 5.

Words and Phrases (Perm.Ed.)

### § 227.12. Administration of Abstractors Law—Hearing examiners

A. The State Auditor and Inspector is hereby charged with the duty of administering the Oklahoma Abstractors Law.<sup>1</sup> The State Auditor and Inspector shall be the sole governmental entity, state, county or municipal, authorized to regulate and issue certificates of authority, permits, and abstract licenses in this state. For the purposes of exercising the powers and performing the duties imposed by the Oklahoma Abstractors Law, the State Auditor and Inspector shall be subject to the provisions of the Administrative Procedures Act, Sections 301 through 326 of Title 75 of the Oklahoma Statutes.

B. The State Auditor and Inspector may designate and employ hearing examiners who shall have the authority to conduct hearings subject to the provisions of applicable rules, regulations, and orders of the State Auditor and Inspector. No person shall serve as a hearing examiner in any proceeding in which any party to the proceeding is or has been a client of the hearing examiner or any partnership, firm, corporation, or other entity with which the hearing examiner is or has been associated. In any hearing the burden of proof shall be upon the moving party.

Laws 1984, c. 163, § 3, eff. Nov. 1, 1984.

<sup>1</sup> Sections 227.10 to 227.29 of this title.

### § 227.13. State Auditor and Inspector—Powers and duties

In performing the duties imposed pursuant to the Oklahoma Abstractors Law,<sup>1</sup> the State Auditor and Inspector shall have the following powers and duties:

1. To prescribe rules and regulations and make such orders as deemed necessary to implement the Oklahoma Abstractors Law; and



2. To hold examinations for applicants for abstract licenses and to promulgate rules and regulations regarding such examinations as deemed proper; and

3. To issue abstract licenses, certificates of authority, or permits in such form as deemed appropriate; and

4. To promulgate rules and regulations governing the issuing of abstract licenses and certificates of authority to nonresidents, associations, corporations, and partnerships; and

5. To suspend, revoke, or reinstate abstract licenses and certificates of authority previously issued, upon good cause shown; and

6. To reprimand, place on probation, or require additional education of licensees and certificate holders upon good cause shown; and

7. To prescribe rules and regulations governing proceedings necessary to perform the duties described in paragraphs 5 and 6 of this section; and

8. To prescribe such penalties as deemed proper to be assessed against licensees and certificate holders for the failure to pay the renewal fees; and

9. To cause the prosecution of any person who violates any of the provisions of the Oklahoma Abstractors Law; and

10. To promulgate such rules and regulations governing the approval of organizations offering courses of study in real estate as are necessary for the administration of the Oklahoma Abstractors Law; and

11. To establish minimum standards to be followed in the preparation of abstracts; and

12. To establish a schedule of fees for applications for or renewals of certificates of authority, abstract licenses, or permits; and

13. To establish the amount of the bond to be filed with applications for abstract licenses, certificates of authority, or permits; and

14. To set criteria for determining what constitutes an excessive abstracting fee; and

15. To deposit all fees collected to the credit of the State Auditor and Inspector Revolving Fund.

Laws 1984, c. 163, § 4, eff. Nov. 1, 1984. Laws 1985, c. 304, § 11, eff. July 24, 1985.

<sup>1</sup> Section 227.10 et seq. of this title.

**Historical Note**

The 1985 amendment substituted Fund" for "State Auditor and Inspector "State Auditor and Inspector Revolving Fund" in paragraph 15.

**§ 227.14. Application for certificate of authority—Fee—Bond—Proof required**

A. Any person, firm, corporation, or other entity desiring to engage in the business of abstracting in this state shall make application to the State Auditor and Inspector for a certificate of authority for each county in which the applicant desires to do business. The application shall be on a form prepared by the State Auditor and Inspector and containing such information as may be necessary to determine whether or not the applicant has complied with the provisions of the Oklahoma Abstractors Law.<sup>1</sup> The application shall be accompanied by a fee and a bond. The application fee shall be set by the State Auditor and Inspector in an amount determined by the number of counties in which the applicant desires to do business not to exceed the following schedule:

<u>County Population</u>	<u>Fee Not to Exceed</u>
Less than 30,000	\$ 250.00
30,000 but less than 60,000	\$ 500.00
60,000 but less than 100,000	\$ 750.00
100,000 or more	\$1,000.00

B. The applicant shall furnish proof to the State Auditor and Inspector that there is an abstract plant available for use for each county for which abstracts will be prepared, or that the applicant was engaged in the business of abstracting in this state on January 1, 1984, and had a valid certificate of authority pursuant to the laws of this state on that date for each county in which the applicant wishes to do business. Or, if it is finally determined that the applicant was entitled to a valid certificate of authority pursuant to the provisions of the previous law, said applicant shall be deemed to have been engaged in the business of abstracting on January 1, 1984, and had a valid certificate of authority pursuant to the laws of this state for each county in which the applicant wishes to do business. All periods for compliance for a certificate of authority pursuant to the provisions of the Oklahoma Abstractors Law shall be extended for like periods from the date of such determination notwithstanding other provisions of the Oklahoma Abstractors Law.

C. The applicant also shall furnish proof of either errors and omissions insurance or a bond for each county in which the applicant wishes to do business to pay damages for possible errors

## ABSTRACTORS

74 § 227.15

in abstracts prepared subject to the provisions of the certificate as follows:

<u>County Population</u>	<u>Amount of Bond</u>
Less than 30,000	\$ 15,000.00
30,000 but less than 60,000	\$ 25,000.00
60,000 but less than 100,000	\$ 50,000.00
100,000 or more	\$100,000.00

Laws 1984, c. 163, § 5, eff. Nov. 1, 1984.

<sup>1</sup> Sections 227.10 to 227.29 of this title.

### Historical Note

#### Source:

Laws 1899, p. 53.  
St.1903, § 1.  
Comp.Laws 1909, § 1.  
R.L.1910, § 1.

Comp.St.1921, § 3610.  
St.1931, § 8513.  
Laws 1975, c. 95, § 1.  
1 O.S.1981, § 1.  
Laws 1983, c. 63, § 1.

## § 227.15. Independent set of abstract books or other system of indexes required

In addition to the bond required any person, firm, corporation, or other entity not engaged in the business of abstracting on January 1, 1984, desiring to enter into the business of compiling or abstracting titles to real estate in any of the counties of the State of Oklahoma from and after the passage of the Oklahoma Abstractors Law,<sup>1</sup> shall have for use in such business an independent set of abstract books or other system of indexes compiled from the instruments of record affecting real estate in the office of the county clerk, and not copied from the indexes in said office, showing in a sufficiently comprehensive form all instruments affecting the title to real property on file or of record in the office of the county clerk and court clerk of the county wherein such business is conducted. Laws 1984, c. 163, § 6, eff. Nov. 1, 1984.

<sup>1</sup> Sections 227.10 to 227.29 of this title.

### Historical Note

#### Source:

Laws 1937, p. 231, § 1.  
1 O.S.1981, § 13.

### Law Review Commentaries

1984 Supreme Court and Court of Appeals cases pertaining to oil and gas and real property. R. Clark Musser, 56 Okl. B.J. 753 (1985).

Residential real estate transaction in Oklahoma—What should attorneys do about it? H. Henley Blair, 53 Okl.B.J. 3059 (1982).

## Notes of Decisions

Copying of records 3  
 Independent books or indexes 2  
 Validity of prior law 1

already engaged in abstracting business, thereby creating monopoly, as statute did not prohibit making of books from county records. *Id.*

## 1. Validity of prior law

Provision of former § 13 of title 1 (repealed; see, now, this section) which prescribed requirements for title abstracters, which required them to have a system for constructing abstracts more comprehensive than publicly available records and indexes, did not violate the equal protection rights of applicant who sought to obtain certificate of authority to do business as an abstracter with only copies of all publicly available records and indexes. *T.I.M. Co., Inc. v. Oklahoma Land Title Ass'n, Okl.*, 698 P.2d 915 (1984).

The requirement of § 13 of title 1 (repealed; see, now, this section) that abstract books, required of persons engaged in business of abstracting real estate titles, be compiled from instruments of record in county clerk's office and not copied from indexes therein, was reasonable, since such indexes are not complete. *Application of Richardson*, 199 Okl. 406, 184 P.2d 642 (1947).

Section 13 of title 1 (repealed; see, now, this section) was not invalid as violating provisions of Const. Art. 2, §§ 2, 7, 32 and Art. 5, § 51, as to rights to liberty, pursuit of happiness and enjoyment of gains of industry, due process of law, monopolies, and laws granting exclusive rights, privileges, or immunities. *Id.*

Section 13 of title 1 (repealed; see, now, this section) was not invalid as forcing persons engaging in the business to acquire sets of books from persons

## 2. Independent books or indexes

Requirement of former § 13 of title 1 (repealed; see, now, this section) that entity seeking certificate of authority to do business as title abstractor have an independent set of abstract books could be satisfied by applicant's demonstration or possession of an independently developed and current tract index comprehensively covering all instruments of record in the offices of the county clerk and court clerk. *T.I.M. Co., Inc. v. Oklahoma Land Title Ass'n, Okl.*, 698 P.2d 915 (1984).

"Independent" as used by former § 13 of title 1 (repealed; see, now, this section) which regulated title abstracting business mandated an abstract plant which was physically separate from public records of county clerk and required abstractor to have developed its own system of abstracting, or, more properly, of indexing the information affecting real property filed in offices of the county clerk. *T.I.M. Co., Inc. v. Oklahoma Land Title Ass'n, Okl.*, 698 P.2d 915 (1984).

## 3. Copying of records

The county clerks of Oklahoma must allow inspection, including copying, of index and record books by all persons (other than prospective abstractors, as provided in § 13 of title 1 (repealed; see, now, this section)) subject only their duty to protect public records in their custody from abuse or destruction. *Op. Atty.Gen. No. 80-207* (Jan. 8, 1981).

## § 227.16. Persons, firms, corporations or other entities engaged in abstracting on January 1, 1984—Application for certificate of authority

On or before March 1, 1985, the State Auditor and Inspector shall distribute an application for a certificate of authority to each person, firm, corporation, or other entity engaged in the business of abstracting in this state on January 1, 1984, who had a valid certificate of authority pursuant to the laws of this state on that

date. Any such person, firm, corporation, or other entity wishing to continue in the business of abstracting in this state shall have until May 1, 1985, to return such application to the State Auditor and Inspector for each county in which the applicant was doing business on January 1, 1984. Any such applications received after May 1, 1985, or any application for authority to prepare abstracts in a county for which a certificate of authority was not held by the applicant on January 1, 1984, shall be treated as an application for a new certificate.

Laws 1984, c. 163, § 7, eff. Nov. 1, 1984.

**§ 227.17. Persons, firms, corporations or other entities not engaged in abstracting on January 1, 1984—Application for certificate of authority**

Any person, firm, corporation, or other entity who wishes to engage in the business of abstracting in this state who was not engaged in the business of abstracting in this state on January 1, 1984, or who did not have a valid certificate of authority in this state on such date shall make application for a certificate of authority. At the time of application, the State Auditor and Inspector shall notify all certificate holders doing business in the county of the application.

Laws 1984, c. 163, § 8, eff. Nov. 1, 1984

**§ 227.18. Certificate of authority—Issuance—Renewal**

A. The State Auditor and Inspector shall issue a certificate of authority to any applicant who has complied with the provisions of the Oklahoma Abstractors Law.<sup>1</sup> The certificate shall be in written form and shall indicate the county or counties in which the applicant may operate. The certificate shall be prominently displayed in the office of the certificate holder.

B. All certificates of authority issued pursuant to the provisions of the Oklahoma Abstractors Law shall expire annually on a staggered schedule established by the State Auditor and Inspector except the first certificates which may cover more than one (1) year but less than two (2) years. Applications for renewal shall be made ninety (90) days prior to expiration and shall be accompanied by a renewal fee in an amount determined by the State Auditor and Inspector not to exceed the original application fee. Any individual, firm, corporation, or other entity holding a certificate of authority who fails to apply for renewal and pay the renewal fee shall be notified no later than sixty (60) days prior to expiration of the certificate of authority. The individual, firm, corporation, or other entity shall have thirty (30) days from the date of notification to file

a renewal application. The name of any individual, firm, corporation, or other entity failing to renew the certificate of authority shall be stricken from the records of the State Auditor and Inspector and said individual, firm, corporation, or other entity shall no longer engage in the business of abstracting in this state until authorized.

Laws 1984, c. 163, § 9, eff. Nov. 1, 1984.

<sup>1</sup> Sections 227.10 to 227.29 of this title.

#### Historical Note

##### Source:

Laws 1897, p. 54.  
St.1903, § 2.  
Comp.Laws, 1909, § 2.

R.L.1910, § 2.  
Comp.St.1921, § 3611.  
St.1931, § 8514.  
Laws 1937, p. 232, § 4.  
1 O.S.1981, §§ 3, 17.

### § 227.19. Current abstract plant required

Beginning November 1, 1984, all individuals, firms, corporations, or other entities engaging in the business of abstracting, shall have available for use or commence compilation of an abstract plant and thereafter shall maintain in a current condition said plant. Failure to do so shall render its certificates of authority subject to revocation. An abstract plant shall be deemed in a current condition if it reflects all documents or other matters that are filed in said county except those filed within the preceding fifteen (15) days. Holders of a certificate of authority issued pursuant to law who were engaged in the business of abstracting on November 1, 1984, shall not be required to construct or maintain an abstract plant of documents filed or recorded prior to November 1, 1984. If any such holder allows said certificate of authority to lapse after November 1, 1984, he shall be required to apply for a new certificate of authority before resuming the business of abstracting.

Laws 1984, c. 163, § 10, eff. Nov. 1, 1984.

### § 227.20. Abstract or copies to be furnished without delay— Refusal to deliver

All abstractors shall furnish abstracts or copies as desired, to the persons applying therefor, in the order of application, without unnecessary delay, and for reasonable compensation pursuant to the requirements of the Oklahoma Abstractors Law.<sup>1</sup> All persons so engaged, whose business is hereby declared to stand upon a like footing with that of common carriers, who shall refuse so to do, if tender of payment is made to them of the amount due for such abstract or copy, not exceeding the said legal fees, as soon as such amount is ascertained, or of a sum adequate to cover said amount

before the ascertainment, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) in any court of competent jurisdiction, and shall also be liable in any action for damages, loss or injury which any person may suffer or incur by reason of failure to furnish such abstract or copy pursuant to the provisions of this section. The provisions of this section shall not apply to orders for abstracts on oil, gas, and other minerals.

Laws 1984, c. 163, § 11, eff. Nov. 1, 1984.

<sup>1</sup> Sections 227.10 to 227.29 of this title.

**Historical Note**

**Source:**

Laws 1909, c. 33, p. 531.  
R.L.1910, § 10.

Comp.St.1921, § 3619.  
St.1931, § 8522.  
1 O.S.1981, § 10.

**§ 227.21. Development of abstract plant—Permit**

Any person wishing to develop an abstract plant shall make application for a permit. The application shall be on a form prepared by the State Auditor and Inspector and shall be accompanied by the fee and the bond set by the State Auditor and Inspector subject to the limits established in Section 5 of the Oklahoma Abstractors Law.<sup>1</sup> All permits shall expire annually. A permit holder who has not completed development of an abstract plant at the time the permit expires may apply for renewal of the permit. Applications for renewal must be made thirty (30) days prior to the scheduled expiration of the original permit and shall be accompanied by the renewal fee. The permit holder shall comply with the provisions of the Oklahoma Abstractors Law<sup>2</sup> to obtain a certificate of authority after completion of the abstract plant.

Laws 1984, c. 163, § 12, eff. Nov. 1, 1984.

<sup>1</sup> Section 227.14 of this title.

<sup>2</sup> Section 227.10 et seq. of this title.

**§ 227.22. Censure, suspension, revocation, continuance, renewal or refusal to issue certificate of authority or permit—Civil penalties**

A. The State Auditor and Inspector shall censure, suspend, revoke, continue, renew, or refuse to issue any certificate of authority or permit issued or applied for pursuant to the provisions of the Oklahoma Abstractors Law,<sup>1</sup> if, after a hearing, the State Auditor and Inspector finds any one or more of the following conditions:

1. Any untrue statement in the application for a certificate of authority or permit; or
2. The violation of or noncompliance with any provision of the Oklahoma Abstractors Law or rule, regulation, or order of the State Auditor and Inspector; or
3. The obtaining of or attempt to obtain a certificate of authority or permit through fraud or misrepresentation; or
4. Conviction of a felony in this state, another state, or a federal court or of a misdemeanor involving moral turpitude; or
5. Conspiracy involving the certificate holder or his agents to obtain an abstract license for an employee, prospective employee, or other person through fraud or misrepresentation; or
6. Failure to properly supervise an abstract licensee whose license is issued through the certificate holder.

B. In addition to or in lieu of any censure, denial, suspension, or revocation of a certificate or permit, any person, firm, corporation, or other entity violating the provisions of the Oklahoma Abstractors Law,<sup>1</sup> upon conviction, may be subject to a civil fine of not less than One Hundred Dollars (\$100.00) nor more than Ten Thousand Dollars (\$10,000.00) for each occurrence. The fine may be enforced in the same manner in which civil judgments may be enforced.

Laws 1984, c. 163, § 13, eff. Nov. 1, 1984.

<sup>1</sup> Sections 227.10 to 227.29 of this title.

#### Historical Note

##### Source:

Laws 1899, pp. 55, 56.  
St.1903, §§ 3, 7.  
Comp.Laws 1909, §§ 3, 7.

R.L.1910, §§ 3, 8.  
Comp.St.1921, §§ 3612, 3617.  
St.1931, §§ 8515, 8520.  
1 O.S.1981, §§ 3, 8.

#### Cross References

Forgery of certificate of authority, abstract, or other document of abstractor, see title 21, § 1628.

### § 227.23. Rights and responsibilities of abstractors

A. Any person, firm, corporation, or other entity holding a valid abstract license or permit, or any abstract licensee affiliated with such person, firm, corporation, or other entity, shall:

1. have free access to the instruments of record affecting real property filed in any city, county, or state office;
2. be permitted to make such memoranda, notations, or copies of such instruments of record;



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3. occupy reasonable space with equipment for that purpose during the business hours of such office;

4. make and prepare abstracts;

5. compile, post, copy, and maintain his books, records, and indexes.

B. The records in any city, county, or state office shall not be taken from the office to which they belong, for any reason, except that records may be taken from the office of the district court clerk by an abstractor who is doing business within that county and has an approved bond on file with the county clerk for a period of time not to exceed twenty-four (24) hours after first giving proper receipt to the appropriate clerk or deputy.

C. An abstractor shall have the right of access to any instrument filed of record in a county office, not later than the close of business of the first business day following the day of filing. There shall be no fee charged for providing access to the instrument.

D. For purposes of this section, "access" means possession of said instrument to mechanically reproduce it, either in the office or out of the office of filing, at the discretion of the county officer having custody of the instrument, which reproduction shall be completed not later than the close of business of the first business day following the day of receipt of the document. Provided if the abstractor fails to return the files within the twenty-four-hour period, the county officer in his discretion may refuse to allow the abstractor to remove said files at a later date. Any county officer making such refusal shall send written notice of such action to the State Auditor and Inspector.

E. All certificates of authority or permit holders and abstract licensees shall be subject to the same obligation to protect and preserve the public records to which they have access as do the public officers who have legal custody of such records. Holders of certificates of authority or permits and abstract licensees shall be subject to the same penalties for a violation of such duty as said officers.

F. Reliance on the county indexes in the preparation of an abstract of title shall not be a defense of liability for an error or omission in an abstract of title.

Laws 1984, c. 163, § 14, eff. Nov. 1, 1984.

### Historical Note

**Source:**

Laws 1899, pp. 53, 54.

St.1903, §§ 1, 2.

Comp.Laws 1909, §§ 1, 2.

R.L.1910, §§ 1, 2.

Comp.St.1921, §§ 3610, 3611.

St.1931, §§ 8513, 8514.  
Laws 1975, c. 95, § 1.

1 O.S.1981, §§ 1, 2.  
Laws 1983, c. 63, § 1.

#### Cross References

Injury to records, see title 21, § 531.  
Larceny or destruction of records, see title 21, § 461.  
Records, duplication and viewing by public, see title 19, § 286.  
Title examination standards, see title 16, c. 1, App.

#### Notes of Decisions

##### Copies of Instruments 3

##### Free access 1

##### Telephones 2

##### 1. Free access

Abstractors had the right to "free access" of the county records under § 1 of title 1 (repealed; see, now, this section) which included sufficient space and facilities to inspect or copy the records. Op.Atty.Gen. No. 82-109 (April 12, 1982).

Abstractors' right of free access under § 1 of title 1 (repealed; see, now, this section) was subject to reasonable rules and regulations to protect the public's equal right to access, to protect the records and to permit the county officers to discharge their duties. Id.

Abstractors' right of free access under § 1 of title 1 (repealed; see, now, this section) did not give the abstractor the right to maintain a abstract office in the clerk's office or the right to maintain exclusive control over any space to the exclusion of the public because such a use of exclusive space would violate Const. Art. 10, § 17 which prohibits the investment of public funds in private enterprise. Id.

##### 2. Telephones

Abstractors Law, § 227.10 et seq. of this title, does not require county clerk to permit abstractor or group of abstractors to maintain private telephone line in his office. Op.Atty.Gen. No. 85-30 (Aug. 15, 1985).

##### 3. Copies of instruments

Under Abstractors Law, § 227.10 et seq. of this title, county clerk may not require that all copies of public instruments affecting realty made by abstractors be reproduced on county reproducing machinery at a fee and may not charge abstractor for access to instrument in his custody. Op.Atty.Gen. No. 85-30 (Aug. 15, 1985).

County clerk has discretionary authority under Abstractors Law, this section, to determine whether to give abstractors access to public instruments affecting real estate in his office or outside his office; if access is afforded within public office, abstractor must be afforded reasonable space to make memoranda, notes, and copies of such instruments with his own equipment at no fee. Op. Atty.Gen. No. 85-30 (Aug. 15, 1985).

### § 227.24. Certain employees required to hold abstract license—Exemptions

Any person in the employ of a holder of a certificate of authority or permit for the purpose of searching county records or compiling abstracts shall hold an abstract license. The provisions of this section shall not apply to an employee whose sole function is to put the work product of others into typewritten or other readable form. Laws 1984, c. 163, § 15, eff. Nov. 1, 1984.

### § 227.25. Qualifications for issuance of license—Term of license—License fee

A. An abstract license shall be issued by the State Auditor and Inspector to an applicant who:

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1. is eighteen (18) years of age or older; and
2. is of good moral character; and
3. has not been convicted of a felony or crime of moral turpitude in this state, another state, or a federal court; and
4. has passed a test for abstractors required by the State Auditor and Inspector.

B. Each abstract license shall be valid for one (1) year. The State Auditor and Inspector shall set the fees for an abstract license and for renewal not to exceed Fifty Dollars (\$50.00).

Laws 1984, c. 163, § 16, eff. Nov. 1, 1984.

### **§ 227.26. Supervision of licensees**

All abstract licensees shall submit to the supervision of a holder of a certificate of authority or permit and shall inform the State Auditor and Inspector in writing of the name and address of that holder of a certificate of authority or permit. If the licensee leaves the employ of that holder of a certificate of authority or permit or changes employment to another holder of a certificate of authority or permit, he shall so inform the State Auditor and Inspector in writing within ten (10) days of the action.

Laws 1984, c. 163, § 17, eff. Nov. 1, 1984.

### **§ 227.27. Censure, revocation or suspension of abstract license**

Upon good cause shown and after a hearing, the State Auditor and Inspector may censure a licensee or revoke or suspend his abstract license for any of the following acts:

1. Making of a materially fraudulent statement in an application for an abstract license; or
2. Having been convicted and exhausted all appellate remedies in a court of competent jurisdiction in this or any other state or a federal court of the crime of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, fraud, or any similar offense, or pleading guilty or nolo contendere to any such offense; or
3. Destroying or secreting public records, or failing to return said records within the designated time; or
4. Any other conduct which constitutes untrustworthy or improper, fraudulent, or dishonest activities; or
5. disregarding or violating any provision of the Oklahoma Abstractors Law; <sup>1</sup> or

6. continued violation after notice from the State Auditor and Inspector of engaging in a practice of charging excessive abstracting fees.

Laws 1984, c. 163, § 18, eff. Nov. 1, 1984.

<sup>1</sup> Sections 227.10 to 227.29 of this title.

**§ 227.28. Charges for abstracts and abstracting—Certain business inducements prohibited**

It shall be unlawful for any abstractor as an inducement to obtaining any business, to pay, rebate, or deduct any portion of or to permit any deduction from a charge made for making, extending, or certifying an abstract of title, to:

1. any owner, mortgagee, or lessee of the real property covered by the abstract of title, or of any right, title, or interest in or lien upon the same; and

2. any principal, broker, agent, or attorney in connection with a sale or lease of real property or the making or obtaining of a loan thereon in which an abstract of title is required, used, or furnished; and

3. any spouse, child, employee, ward, officer, director, subsidiary, affiliate, parent, relative within the fifth degree, personal representative, or partner of any person, firm, or corporation included in this section.

All charges for abstracts and abstracting shall be separately stated and shall not be combined with title insurance, closing fees or examination charges, shall be uniform for all abstracts of whatsoever kind or nature, whether the abstract is prepared for use by the abstractor or for others purchasing abstracts from the abstractor; and any other charge therefor shall be unlawful.

Laws 1984, c. 163, § 19, eff. Nov. 1, 1984.

**§ 227.29. Limitation of actions**

An action for damages by reason of any imperfect or false abstract hereafter compiled must be brought within five (5) years from the date the abstract certificate was issued.

Laws 1984, c. 163, § 20, eff. Nov. 1, 1984.

**Historical Note**

**Source:**

Laws 1937, p. 233, § 6.

<sup>1</sup> O.S.1981, § 18.

conflict with Oklahoma Statutes arises concerning accounting systems for those counties utilizing electronic data processing, the county may request in writing that the State Auditor and Inspector approve an alternate accounting procedure. The State Auditor and Inspector shall have the authority to approve or disapprove such requests. Annually, the State Auditor and Inspector shall provide a report of those counties requesting alternate accounting systems to the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The State Auditor and Inspector shall not change any accounting systems or procedures during the last year of his term of office. He shall make a thorough examination of the books, accounts and vouchers of such officers, ascertaining in detail the various items of receipts and expenditures. He shall report to the Governor the refusal or neglect of any state or county officer to obey his instruction. He shall make a report of the result of his examination, which shall be filed in the Office of the State Auditor and Inspector, as well as any failure of duty by any financial officers, and the Governor may cause the result of such examination to be published. Provided, that no county officer shall be required to discard any books or supplies on hand.

Amended by Laws 1988, c. 60, § 1, eff. Nov. 1, 1988.

#### Historical and Statutory Notes

Section 2 of Laws 1988, c. 60, provides for an effective date.

### OKLAHOMA ABSTRACTORS LAW

#### § 227.11. Definitions

##### Notes of Decisions

##### 1. Abstract of title

Compilation of copies of real estate records without warranty as to completeness or accuracy was not "abstract of title," and, thus, corporation that made compilation was not in business of

preparing abstracts of title to real estate, where warranties of completeness or accuracy were disclaimed, and where compilation did not contain all instruments affecting title located in office of county clerk and office of court clerk. *American First Abstract Co. v. Western Information Systems, Inc.*, Okl., 735 P.2d 1187 (1987).

#### § 227.14. Application for certificate of authority—Fee—Bond—Proof required

A. Any person, firm, corporation, or other entity desiring to engage in the business of abstracting in this state shall make application to the State Auditor and Inspector for a certificate of authority for each county in which the applicant desires to do business. The application shall be on a form prepared by the State Auditor and Inspector and containing such information as may be necessary to determine whether or not the applicant has complied with the provisions of the Oklahoma Abstractors Law.<sup>1</sup> The application shall be accompanied by a fee and a bond. The bond may be a corporate surety bond or a personal bond in the form of cash or a certificate of deposit endorsed in favor of and delivered to the State Auditor and Inspector. The application fee shall be set by the State Auditor and Inspector in an amount determined by the number of counties in which the applicant desires to do business not to exceed the following schedule:

<u>County Population</u>	<u>Fee Not to Exceed</u>
Less than 30,000	\$ 250.00
30,000 but less than 60,000	\$ 500.00
60,000 but less than 100,000	\$ 750.00
100,000 or more	\$1,000.00

B. The applicant shall furnish proof to the State Auditor and Inspector that there is an abstract plant available for use for each county for which abstracts will be prepared, or that the applicant was engaged in the business of abstracting in this state on January 1, 1984, and had a valid certificate of authority pursuant to the laws of this state on that date for each county in which the applicant wishes to do business. Or, if it is finally determined that the applicant was entitled to a valid certificate of authority pursuant to the provisions of the previous law, said applicant shall be deemed to have been engaged in the business of abstracting on January 1, 1984, and had a valid certificate of authority pursuant to the laws of this state for

each county in which the applicant wishes to do business. All periods for compliance for a certificate of authority pursuant to the provisions of the Oklahoma Abstractors Law shall be extended for like periods from the date of such determination notwithstanding other provisions of the Oklahoma Abstractors Law.

C. The applicant also shall furnish proof of either errors and omissions insurance or a bond for each county in which the applicant wishes to do business to pay damages for possible errors in abstracts prepared subject to the provisions of the certificate as follows:

<u>County Population</u>	<u>Amount of Bond</u>
Less than 30,000	\$15,000.00
30,000 but less than 60,000	\$25,000.00
60,000 but less than 100,000	\$50,000.00
100,000 or more	\$100,000.00

The bond may be a corporate surety bond or a personal bond in the form of cash or a certificate of deposit endorsed in favor of and delivered to the State Auditor and Inspector.

Amended by Laws 1988, c. 56, § 1, eff. Nov. 1, 1988.

#### Historical and Statutory Notes

Section 2 of Laws 1988, c. 56, provides for an effective date.

### § 227.28. Charges for abstracts and abstracting—Certain business inducements prohibited

#### Notes of Decisions

##### 1. Time of estimate

An abstractor may not, under 74 O.S.Supp. 1986, § 227.28, quote or estimate charges by using an all-inclusive rate, but must state the ab-

stractor fee separate from title examination fees and title insurance charges, regardless of whether the quote or estimate is made upon initial inquiry by a prospective client or later in the transaction. Op.Atty.Gen. No. 86-102 (1-9-87).

## CHAPTER 9B.—CLIMATOLOGICAL SURVEY

### § 245. Survey created—Director—Object and duties—Copies—Report

A. The Climate Office of the State of Oklahoma located at Norman, Oklahoma, shall be under the direction and supervision of the Board of Regents of the University of Oklahoma and shall be known as the Oklahoma Climatological Survey. The Oklahoma Climatological Survey is hereby re-created, to continue until July 1, 1994, in accordance with the provisions of the Oklahoma Sunset Law.<sup>1</sup>

B. The director of the Oklahoma Climatological Survey shall be appointed by the Board and shall also be the state climatologist. The salary of the director shall be determined by the Board.

C. The Oklahoma Climatological Survey shall have for its object and duties the following:

1. To acquire, archive, process and disseminate, in the most cost-effective way possible, all climate and weather information which is or could be of value to policy and decision makers in the state;
2. To act as the representative of the state in all climatological and meteorological matters both within and outside the state when requested to do so by the legislative or executive branches of the state government;
3. To prepare, publish and disseminate periodic regular climate summaries for those individuals, agencies and organizations whose activities are related to the welfare of the state and are affected by climate and weather;
4. To conduct and report on studies of climate and weather phenomena of significant socio-economic importance to the state;
5. To evaluate the significance of natural and man-made, deliberate and inadvertent changes or modifications in important features of the climate and weather

### **III. TITLE EXAMINATION STANDARDS**

#### **A. BACKGROUND AND AUTHORITY OF STANDARDS**

On November 16, 1946 the General Assembly and House of Delegates of the Oklahoma Bar Association 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 90 Standards in Oklahoma, and about 13 of these have no specific citation of authority (i.e., Oklahoma statutes or case law).

In Oklahoma, new and revised Standards are proposed yearly by the Title Examination Standards Committee ("Committee") to its parent organization--the OBA Real Property Section ("Section")--at the Section's annual meeting, usually held in November of each year. Immediately thereafter, the Section forwards to the Oklahoma Bar Association ("OBA") House of Delegates ("House")--meeting at the same time as the Section--for the House's consideration and approval, any new or revised Standards which were approved at the Section's meeting.

These Oklahoma Standards have received acceptance by 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. (emphasis added)

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

The Standards become binding between the parties (1) if the parties' contract incorporates the Standards as the measure of the quality of title (See: Standard 2.2), 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. 1985 Supp. §540; also see: Hull, et al. v. Sun Refining, 789 P.2d 1272 (Okla. 1990)]. In these instances, the parties can be subject to suits to rescind their contracts, or to seek damages, as appropriate, with the Court's decision being based on the "marketability" of title as measured, in part, by the Standards.



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**EDITOR'S NOTE:**

\* Revised on November 16, 1990

\*\* Added on November 16, 1990

## C. Selected Abstracting Related Standards

### 1. Record Title

#### 4.1 MARKETABLE TITLE DEFINED

All title examinations should be made on the basis of marketability as defined by the Supreme Court, to wit:

"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."

Cross Reference: See Standard 19.1.

Authority: *Pearce v. Freeman*, 122 Okla. 285, 254 P. 719 (1927); *Hausam v. Gray*, 129 Okla. 13, 263 P. 109 (1928); *Campbell v. Harsh*, 31 Okla. 436, 122 P. 127 (1912); *Jennings v. New York Petroleum Royalty Corp.*, 169 Okla. 528, 43 P.2d 762 (1934); *Tull v. Milligan*, 173 Okla. 131, 48 P.2d 835 (1935); *Seyfer v. Robinson*, 93 Okla. 156, 219 P. 902 (1923); *Tucker v. Thaves*, 50 Okla. 691, 151 P. 598 (1915); *Ammerman v. Karnowski*, 109 Okla. 156, 234 P. 774 (1924); *Wilson v. Shasta Oil Co.*, 171 Okla. 467, 43 P.2d 769 (1935); *Empire Gas & Fuel Co. v. Stern*, 15 F.2d 323 (8th Cir. 1926); *Leedy v. Ellis County Fair Ass'n*, 188 Okla. 348, 110 P.2d 1099 (1941); *Hanlon v. McLain*, 206 Okla. 227, 242 P.2d 732 (1952); *Gordon v. Holman*, 207 Okla. 496, 250 P.2d 875 (1952); *Hawkins v. Johnson*, 203 Okla. 398, 222 P.2d 511 (1950); *Koutsky v. Park Nat'l Bank*, 167 Okla. 373, 29 P.2d 962 (1934); *Davidson v. Roberson*, 92 Okla. 161, 218 P. 878 (1923).

History: Adopted as 11, November 16, 1946, 17 O.B.A.J. 1729 (1946), printed, *id.* at 1751-1752; became 1 on renumbering in 1948, 19 O.B.A.J. 223 (1948), at which time the *Leedy* case was added to the cited authority. On November 30, 1960, the last five cases cited were added, 1960 Proceedings of the Annual Meeting of the Oklahoma Bar Association at 20. Cross reference added, December 2, 1965. Resolution No. 2, 1965 Real Property Committee, 36 O.B.A.J. 2094 (1965), *id.* at 2182. Approved by Real Property Section and adopted by House of Delegates, 37 O.B.A.J. 437 (1966).

## 2. Certificates

### CHAPTER 1. THE ABSTRACT

#### 1.1 RECERTIFICATION UNNECESSARY

It is unnecessary that attorneys require the entire abstract to be certified every time an extension is made. For the purpose of examination, an abstract should be considered to be sufficiently certified if it is indicated that the abstractors were bonded at the dates of their respective certificates. It is not a defect that at the date of the examination the statute of limitations may have run against the bonds of some of the abstractors.

Authority: L. Simes & C. Taylor, Model Title Standards, Standard 1.3, at 12 (1960); Kansas Title Standard 2.2; Montana Title Standard 22; Nebraska Title Standard 22; 74 O.S.A. §§227.14 and 227.29.

Comment: 1. Title Standard 26, requiring re-certification of abstractors certificates after five years, adopted November, 1946, was repealed by the House of Delegates on November 30, 1960. The request for withdrawal came from counties where re-certification charges were considered excessive. Investigation disclosed Standard 26 was not in line with similar standards of other states and particularly the model standard prepared by Professor Lewis M. Simes and Mr. Clarence D. Taylor, under the auspices of the Section of Real Property, Probate and Trust Law of the American Bar Association. The 1960 Title Examination Standards Committee recommended that Title Standard 26 be withdrawn and the model standard approved in lieu thereof. This recommendation was approved by the House of Delegates, November 30, 1960, and the new standard re-numbered Standard 1.1.

2. It is not the purpose of the standard to discourage or prevent the examining attorney from requiring re-certification when in his judgment abstracting errors or omissions have occurred, or when he has reason to question the accuracy of all or a particular portion of an abstract record.

3. Abstractors in Oklahoma have been required to be bonded since prior to statehood. The 1899 Okla. Sess. Laws p. 53 was enacted March 10, 1899. It has been retained since that time subject to the Revision of 1910, which added a provision for a corporate surety and made it clear that the abstractor's liability on the bond extended to any person injured.

4. The limitation applicable to an action for damages on an abstractor's bond is five years from the date of the abstractor's certificate, 74 O.S.A. §227.29. In 1984, these provisions were made a part of the "Oklahoma Abstractors Law", 74 O.S.A. §227.14.

History: Adopted as 20, November 16, 1946, 17 O.B.A.J. 1729 (1946), printed, *id.* at 1754; became 26 on renumbering, 19 O.B.A.J. 223, 228 (1948). Standard 26 was deleted and replaced with a new standard as above on November 30, 1960, 1960 Proceedings of the Annual Meeting of the Oklahoma Bar Association at 21-22. On December 3, 1960, it was reported to the House of Delegates that the Real Property Section recommended to the House that Standard 26 be repealed but that it not be replaced. Upon motion, the proposal was referred to the Executive Council for study and action, *id.* at 102-103. The Executive Council then referred the matter to the 1961 Title Examination Standards Committee for study and presentation in 1961, Minutes, December 15, 1960, Executive Council Minute Book 1959-60, at 881. The Real Property Committee, predecessor to the Title Examination Standards Committee, offered the new version of Standard 26, (renumbered as 1.1) to the Real Property Section in 1961 as Recommendation Number 7. The Real Property Section referred the matter back to the Real Property Committee for further study, and the recommendation was withdrawn from the House of Delegates, 32 O.B.A.J. 2280 (1961). The recommendation is printed at length, *id.* at 1868, 1923, 1972, & 2032. The 1962 Real Property Committee's Report recommended that the caption to this standard be amended by adding the word "UNNECESSARY" so that the caption would read "RECERTIFICATION UNNECESSARY" and recommended the addition of authorities and comments, see Recommendation (1), 33 O.B.A.J. 2157 (1962) and Exhibit A, *id.* at 2161. The recommendation was approved by the Real Property Section and the House of Delegates, *id.* at 2469, November 29, 1962.

#### 1.2 TRANSCRIPTS OF COURT PROCEEDINGS

Transcripts of court proceedings affecting real estate certified by a court clerk or abstractor are equally satisfactory and should be accepted by the examining attorney.

Authority: 20 O.S.A. §1005; 12 O.S.A. §§2902, 3001, 3002, 3003 & 3005; 28 O.S.A. §31; 19 O.S.A. §167; 74 O.S.A. §§227.14 & 227.29; Op. Atty. Gen. No. 80-95 (July 31, 1980); Arnold v. Board of Com'rs. of Creek County, 124 Okla. 42, 254 P. 31 (1926).

Comment: Court clerks are directed to retain or microfilm all records on file in their offices, 20 O.S.A. §1005, and are authorized to make certified copies of and authenticate such documents, 28 O.S.A. §31. Such certified or authenticated documents are admissible in evidence, 12 O.S.A. §§2902, 3001, 3003 & 3005.

Abstractors are required to be bonded or maintain errors and omissions insurance in specified amounts, 74 O.S.A. §227.14. Court clerks are required to be bonded under the county officers' blanket bond, 19 O.S.A. §167; Op. Atty. Gen. No. 80-95 (July 31, 1980). The five year statute of limitations applies to both bonds. The statute begins to run as to the court clerk's bond from the accrual of the cause of action, *Arnold v. Board of Com'rs. of Creek County, supra*. The statute begins to run as to the abstractor's bond or errors and omissions insurance from the date of issuance of the abstract certificate, 74 O.S.A. §227.29.

History: Adopted as 21, November 16, 1946, 17 O.B.A.J. 1729 (1946), printed *id.* at 1754; became 27 on renumbering in 1948, 19 O.B.A.J. 228. (1948). Present form substituted for original as per Resolution 4, 1967 Real Property Committee, 38 O.B.A.J. 2394 (1967) and printed as Exhibit A, *id.* at 2395 and without exhibit designation as a proposed standard, *id.* at 2319. The proposal was approved by the Real Property Section and adopted by the House of Delegates on December 1, 1967, 38 O.B.A.J. 2603 (1967).

The 1946 form, as indicated in the 1967 form, disapproved of the acceptance of certification of transcripts of court proceedings by court clerks.

The 1984 Title Examination Standards Committee recommended the repeal of this standard in its Report, 55 O.B.J. 1817 (1984). The recommendation was approved by the Real Property Section, November 1, 1984, and adopted by the House of Delegates November 2, 1984. It was explained at the annual Section meeting that the legislation relied upon in making the 1967 revision of the standard had been repealed and that additional time was needed to study what form a new standard on the subject should take.

The report of the 1987 Title Examination Standards Committee recommended the readoption of this as the body of this standard in the same language in which it stood at the time of its repeal in 1984. Research revealed that there was still adequate statutory authority to support the standard in its prior form. This authority is set out in the new "Authority" and "Comment". The proposal of the Committee is to be found at 58 O.B.A.J. 2839 (1987). The recommendation was approved by the Real Property Section, November 12, 1987, and adopted by the House of Delegates, November 13, 1987.

### 1.3 FEDERAL COURT CERTIFICATES

With respect to lands in Oklahoma, Tulsa and Muskogee counties, the abstractor's certificate should cover the records of the appropriate United States District Court with respect to judgments, court proceedings, suits pending or liens of any kind against any of the record owners during period covered by such certificate.

History: Adopted December 2, 1965. Resolution No. 6, 1965 Real Property Committee, 36 O.B.A.J. 2094 & 2182 (1965) and Exhibit C, *id.* at 2098 & 2186. Approved by Real Property Section and adopted by House of Delegates, 37 O.B.A.J. 437 (1966).

### 1.4 UNMATURED SPECIAL ASSESSMENTS

A Title Examiner is warranted in requiring that the abstract have a certificate showing unmatured installments of special assessments, if any, which may affect the land under examination.

Comment: There are numerous governmental bodies empowered to levy special assessments which are valid liens against real property. A Final Certificate stating that there are no unpaid installments of special assessments against the real estate under examination would not necessarily disclose unmatured installments of special assessments which might be valid encumbrances thereon.

The practice of covering the matter by specifically stating in the title opinion that the opinion does not cover unmatured special assessments is not recommended.

History: Adopted December 2, 1965. Resolution No. 5, 1965 Real Property Committee, 36 O.B.A.J. 2094 & 2182 (1965) and Exhibit B, *id.* at 2097-98 & 2185-86. Approved by Real Property Section and adopted by House of Delegates, 37 O.B.A.J. 437 (1966).

### 1.5 JUDGMENT LIENS

(This standard as amended has been moved to Chapter 12, Judgment Liens, Execution and Attachment, and is now Standard 12.1.)

History: The 1985 Report of the Title Examination Standards Committee recommended that the action recited above be taken, 56 O.B.J. 2535 (1985). Recommendation approved by Real Property Section, November 14, 1985, and adopted by the House of Delegates, November 15, 1985, 57 O.B.J. 5 (1986).

### 3. Useful Information

#### CHAPTER 3. USE OF THE RECORD

##### 3.1 INSTRUMENTS BY STRANGERS

An instrument or abstract thereof seen by a title examiner in the course of examination of title, which is executed by any person or other legal entity who, at the time of such execution, did not own some interest in the property as shown by the record, or owned a lesser interest than the instrument purports to convey, charges the examiner and his or her client with knowledge of any interest which such person or entity in fact had which a reasonable inquiry would reveal.

A stray instrument or abstract thereof which is or could be a root of title under the Marketable Record Title Act, 16 O.S.A. §§71-80, may not be disregarded by the examiner, but must be regarded as creating, or potentially creating, a root of title under the Marketable Record Title Act.

Authority: *Mobbs v. City of Lehigh*, 655 P.2d 547 (Okla. 1982); 16 O.S.A. §§71-80.

Comment: See Comment, Standard 19.7 and Comment 4, Standard 19.9.

If a reasonable inquiry does not reveal that such person or entity did in fact have some interest in the subject property or as great an interest as he conveyed, or if it appears from the context of the situation that the person or entity did not in fact have some such interest, then the examiner may waive objection to the defect caused by the said instrument, if the instrument is not such an instrument as is or could become a root of title under the Marketable Record Title Act.

Authority: *Tenneco Oil Co. v. Humble Oil & Refining Co.*, 449 P.2d 264 (Okla. 1969); See *Pearson v. Mullins*, 369 P.2d 825-829 (Okla. 1962); 25 O.S.A. §13.

Comment: Since the decision in *Tenneco, supra*, the standard as it existed prior to *Tenneco* permitting examiners to ignore stray instruments, even with its caveat, and the standard as it was amended in 1976 (see Standard 3.1, 1988 Title Examination Standards Handbook) are not supported by the law and therefore ought not to be continued. While it is true that many stray instruments are the result of a scrivener's error in drafting the description, it is also true that an instrument may appear to be stray because the grantor failed to record the instrument which carried title to said grantor. When the situation is of this latter kind, the case comes under the facts and decision in *Tenneco, supra*. For this reason the examiner who knows of a stray instrument must make such inquiry that will assure the examiner that the grantor in the stray instrument did not have some interest in the property even though it be not of record.

History: The previous standard bearing this number and title was repealed by House of Delegates, Minutes of the House, December 5, 1975, at 51. The standard operative from December 3, 1976 until December 9, 1988 was one of three alternate proposals submitted in the 1976 Report of Real Property Section, 47 O.B.A.J. 2529-38 (1976). Exhibit "A" of the said report was selected by the Section and upon its recommendation was adopted by the House of Delegates, See Minutes of the House, December 2, 1976, at 166-68. The standard in its current form was proposed in the 1988 Report of the Title Examination Standards Committee, 59 O.B.J. 3098, 3099-3100 (1988). See also the first paragraph of the "Short Summary of the 1988 Proposals" 59 O.B.A. 3098 (1988) where the standard is erroneously referred to as "3.2" rather than "3.1". The proposal was approved by the Real Property Section, December 8, 1988 and adopted by the House of Delegates, December 9, 1988.

#### 4.4 CORRECTIVE INSTRUMENTS

A grantor who has conveyed by an effective, unambiguous instrument cannot, by executing another instrument, make a substantial change in the name of the grantee, decrease the size of the premises or the extent of the estate granted, impose a condition or limitation upon the interest granted, or otherwise derogate from the first grant, even though the latter instrument purports to correct or modify the former. However, marketability dependent upon the effect of the first instrument is not impaired by the second instrument.

Authority: R. & C. Patton, Titles §82 (2d ed. 1957); Decennial Digests, *Deeds*, Key No. 43; Kirkpatrick v. Ault, 177 Kan. 552, 280 P.2d 637 (1955); Walters v. Mitchell, 6 Cal.App. 410, 92 P. 315 (1907); Lytle v. Hulen, 128 Or. 483, 275 P. 45 (1929).

History: Adopted as 4.4, December 2, 1961, 32 O.B.A.J. 2280 (1961), printed, *id.* at 1865, 1920, 1969 & 2029, *see also id.* at 1425.

#### 6.1 DEFECTS IN OR OMISSION OF ACKNOWLEDGMENTS IN INSTRUMENT OF RECORD

With respect to instruments relating to interests in real estate:

A. The validity of such instruments as between the parties thereto is not dependent upon acknowledgments, 16 O.S.A. §15.

B. As against subsequent purchasers for value, in the absence of other notice to such purchasers, such instruments are not valid unless acknowledged and recorded, except as provided in Paragraph C herein, 16 O.S.A. §15.

C. Such an instrument which has not been acknowledged or which contains a defective acknowledgment shall be considered valid notwithstanding such omission or defect, and shall not be deemed to impair marketability, provided such instrument has been recorded for a period of not less than five (5) years, 16 O.S.A. §§27a & 39a.

History: Adopted December 4, 1981. Proposed by Report of the 1981 Title Examination Standards Committee, 52 O.B.J. 2723, 2724 (1981). Approved by Real Property Section and adopted by House of Delegates, 53 O.B.J. 257-58 (1982). The title examination standard which, prior to December 4, 1981, bore the number 6.1 has been renumbered 2.3.

In 1988, the Oklahoma Legislature amended 16 O.S.A. §27a by changing from ten (10) to five (5) years the period of time for which an instrument must have been of record to validate its recording if it is not acknowledged or has a defective acknowledgment. This amendment made it possible to combine "C" and "D" of the standard as it was formerly. These changes were proposed in the 1988 Report of the Title Examination Standards Committee, 59 O.B.J. 3098, 3100 (1988). The Real Property Section approved the amendments, December 8, 1988 and the House of Delegates adopted the amended standard, December 9, 1988.

During the consideration of the 1988 proposal to amend this standard, the Committee directed the editor, if the proposal were adopted, to record in the History that the Committee had considered the proposition that the Oklahoma Legislature's 1988 amendment to §27a applied to acknowledgments generally and was not limited to acknowledgments by corporations only. The Committee accepted that proposition as valid and therefore amended this standard applying to acknowledgments generally.

#### 6.4 DELIVERY; DELAY IN RECORDING

Delivery of instruments acknowledged and recorded is presumed in all cases. It is also presumed that delivery occurred on the date of the instrument's execution. Delay in recording, with or without record evidence of the intervening death of the grantor, does not end the presumption or create an unmarketable title. However, as an added exceptional protection to his client, an examiner may satisfy himself as to the facts by inquiry outside the record title.

Authority: *Watkins v. Musselman*, 205 Okla. 514, 239 P.2d 418 (1951); *Fisher v. Pugh*, 261 P.2d 181 (Okla. 1953); *State, ex rel. Comm'r's of Land Office v. Leecraft*, 279 P.2d 323 (Okla. 1955); *Wasson v. Collett*, 204 Okla. 360, 230 P.2d 258 (1951); *Hamburg v. Doak*, 207 Okla. 517, 251 P.2d 510 (1952); *McKeever v. Parker*, 204 Okla. 1, 226 P.2d 425 (1950); 12 O.S.A. §§2902 & 3005 (which replaced 16 O.S.A. §27, repealed by 1978 Okla. Sess. Laws ch. 285, §1102); P. Basye, *Clearing Land Titles* §13 (1953); *Powell on Real Property*, §899 (1958); 26A C.J.S. *Deeds*, §§185, 187 & 204g; L. Simes & C. Taylor, *Model Title Standards*, Standard 6.3, at 43-45 (1960).

Comment: The presumption of delivery of recorded instruments inheres in our system of proving titles by public records. This is the law in Oklahoma. The presumption is strengthened by our statute making certified copies of recorded instruments affecting real estate *prima facie* evidence in all courts without further authentication. It is not overcome by inferences to the contrary drawn from the record. When the record shows a long delay in recording or the death of the grantor prior to the recording of the instrument, the following procedures are suggested: (1) if the instrument has been recorded longer than fifteen years, do not inquire; (2) if the abstract or records or convenient inquiries do not reveal the death of the grantor, do not inquire further; and (3) if death occurred between the dates of execution and recording, inquire but appraise the situation realistically with a view to the probability of a claim of non-delivery. Affidavits resulting from such inquiry need not be recorded. Recording is unnecessary and may create more doubts than previously existed. It should be emphasized that delay in recording and post-mortem recordation are in themselves unobjectionable and do not render a title unmarketable. The actual risk inherent in non-delivery is easily over-emphasized. For, by use of presumptions, estoppel and other devices, courts properly display an almost insurmountable hostility to claims against innocent purchasers of apparently clear titles.

History: Adopted as 6.4, December 2, 1961, 32 O.B.A.J. 2280 (1961), printed, *id.* at 1867-68, 1922-23, 1971-72 & 2031-32.

#### 10.2 IDENTITY OF PARTNERS OF FICTITIOUS NAME PARTNERSHIP

Identity of partners of a fictitious name partnership may be established by reference to the latest certificate of fictitious name partnership filed in the office of the county clerk in the county in which the land is located as of the date of conveyance in the partnership name. If the certificate of fictitious name has not been filed in the county where the land is located, a certified copy of the certificate of fictitious name partnership filed in the office of the county clerk of the county of the principal place of business of the partnership, or a copy of the current articles of partnership, should be examined.

Authority: 54 O.S.A. §§81-86.

History: Adopted as 17, November 16, 1946, 17 O.B.A.J. 1729 (1946), printed, *id.* at 1753; became 19 on renumbering in 1948, 19 O.B.A.J. 223, 226 (1948); amended December 8, 1955, 27 O.B.A.J. 176 (1956). Substantially amended December 2, 1965. Resolution No. 8, 1965 Real Property Committee, 36 O.B.A.J. 2094 & 2182 (1965), and Exhibit E, *id.* at 2098 & 2186. Approved by Real Property Section and adopted by House of Delegates, 37 O.B.A.J. 437, 438 (1966). Further amendments proposed by the 1985 Report of the Title Examination Standards Committee, 56 O.B.J. 2537 (1985), proposal amended by Real Property Section, November 14, 1985, and adopted by House of Delegates, as amended by the Section, November 15, 1985, 57 O.B.J. 5 (1986).

#### 10.3 IDENTITY OF GENERAL PARTNERS OF LIMITED PARTNERSHIP

The identity of the general partners of a limited partnership may be established by the certificate of limited partnership on file in the office of the Secretary of State. A certified copy of such certificate may be filed in the office of the county clerk of the county in which land described in a partnership conveyance is located.

Authority: 54 O.S.A. §§143 & 174.

History: Proposed by report of 1971 Real Property Committee as part of Resolution (3) published, 42 O.B.A.J. 2899, 3017, 3081 & 3165 (1971) and Exhibit C, *id.* at 2902, 3020, 3084 & 3168 where the text of this standard is published as proposed standard 10.4. Approved as 10.3 by the Real Property Section on December 2, 1971, and adopted as such by the House of Delegates on December 3, 1971, 43 O.B.A.J. 642 (1972). Change in Authority citation only was proposed by 1989 Report of the Title Examination Standards Committee, 60 O.B.J. 2502, 2515 (1989), and approved by the Real Property Section on November 16, 1989. The amendment was adopted by the House of Delegates on November 17, 1989, 60 O.B.J. 2941, 2952 (1989).



## 21.1 VALIDITY OF INSTRUMENTS EXECUTED BY ATTORNEY-IN-FACT

Any instrument affecting real estate may be executed by an Attorney-in-Fact, duly appointed and empowered, 16 O.S.A. §3, unless:

A. The Power of Attorney was not executed, acknowledged and recorded in the manner required by 16 O.S.A. §20; or

B. A revocation of the Power of Attorney has been recorded in the same office in which the instrument containing the Power of Attorney was recorded, 16 O.S.A. §21; or

C. The Grantor has died; or an order of a court has appointed a guardian of the Grantor's person or property, or both, unless the order otherwise provides; or the Power of Attorney has expired or terminated by its own terms; or

D. The Power of Attorney has been otherwise terminated by law, and such matter either appears in the abstract or is in the personal knowledge of the examiner.

Caveat: Until the law is clarified, a conveyance or encumbrance of a homestead interest by an Attorney-in-Fact should not be accepted to vest marketable title in the grantee.

History: Standard adopted by recommendation of Report of 1983 Title Examination Standards Committee, see Report, 54 O.B.J. 2379, 2383-84 (1983), approval of the Real Property Section, November 3, 1983, and adoption by the House of Delegates, November 4, 1983.

## 22.1 POWERS OF TRUSTEE

The trustee of an express trust has the power to grant, deed, convey, lease, grant easements upon, otherwise encumber and execute assignments or releases with respect to the real property or interest therein which is subject to the trust. A trustee's act is binding upon the trust and all beneficiaries thereof, in favor of all purchasers or encumbrancers without actual knowledge of restrictions or limitations upon the trustee's powers by the terms of the trust, and without constructive knowledge imposed by the trust instrument containing restrictions and limitations having been recorded in the county where the real estate is located.

Authority: 60 O.S.A. §§171 et seq., 175.7 & 175.45; and see 60 O.S.A. §175.24 for a listing of the extensive powers which a trustee has unless they have been denied to the trustee by the trust agreement or a subsequent order of a court; *Cox v. Broadway, Inc.*, 708 P.2d 1087 (Okla. 1985); *In re Baumgardner*, 711 P.2d 92 (Okla. 1985); *Morris v. Meacham*, 718 P.2d 1355 (Okla. 1986).

Comment: In a declaration of legislative intent enacted as part of the legislation, it is said that trusts are private instruments and therefore need not be recorded unless the trustor desires to put the public on notice of restriction on the trustee's powers.

History: The standard was proposed as "Standard 22.2" in the 1983 Report of the Title Examination Standards Committee, see Report, 54 O.B.J. 2379 at 2384 (1983). It was renumbered "22.1" by the Real Property Section prior to the Section's approval of the standard after the Section referred the proposed "Standard 22.1" back to the Committee, November 3, 1983. It was adopted as renumbered by the House of Delegates, November 4, 1983.

The report of 1987 Title Examination Standards Committee recommended amendment of the first sentence to refine the statement of the trustee's powers. In the second sentence, the deletion of the words "done after October 1, 1979" (the effective date of an amendment to 60 O.S.A. 175.45) was recommended, and language relating to notice was to be refined. It was further recommended that additional statutory and case citations be added to "Authority". These changes were approved by the Real Property Section, November 12, 1987, and adopted by the House of Delegates on November 13, 1987.

## 4. Execution Sales

### 12.4 NOTICE REQUIREMENTS FOR EXECUTION SALES

#### A. NOTICE OF SALE.

1. **On or after March 23, 1985.** As to all sheriff's sales of real property upon general or special execution occurring on or after March 23, 1985, but prior to November 1, 1986, efforts must have been taken which were reasonably calculated to afford personal notice of the sale to those parties who had an interest or estate in the property sold and whose actual whereabouts were known or could have been ascertained with due diligence. The record of the proceedings should reflect that such steps have been taken.

Authority: 12 O.S.A. §§757, 764; *Cate v. Archon Oil Co., Inc.*, 695 P.2d 1352 (Okla. 1985); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment: The rule of *Cate v. Archon Oil Co.*, *supra*, was made effective prospectively to all sales governed by 12 O.S.A. §§757 & 764 after issuance of mandate, which occurred March 22, 1985.

2. **On or after November 1, 1986.** As to all sheriff's sales of real property upon general or special execution occurring on or after November 1, 1986, but prior to November 1, 1987, such sales shall be set aside on motion by the court to which the execution is returnable unless the party causing the execution to be issued:

a. Causes a written notice of sale containing the legal description of the property to be sold and the date, time and place where the property will be sold to be mailed, by first-class mail, postage prepaid, to:

- i. The judgment debtor; and
- ii. Any holder of an interest in the property to be sold; and
- iii. All other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property;

at least ten (10) days prior to the date of the sale, if the names and addresses of such persons are known; and

b. Causes publication notice to be given in conformity with 12 O.S.A. §764(a)(2); and

c. Files in the case an affidavit of proof of mailing and of publication or posting; and

d. Causes such sale to be held at least thirty (30) days after the date of first publication of the notice required in 12 O.S.A. §764(a)(2).

The record of the proceedings should reflect that such steps have been taken.

Authority: 12 O.S.A. §764; *Cate v. Archon Oil Co., Inc.*, 695 P.2d 1352 (Okla. 1985); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment: 12 O.S.A. §764 was amended effective November 1, 1986, to provide the specific notice requirements set forth above.

3. **On or after November 1, 1987.** As to all sheriff's sales of real property upon general or special execution occurring on or after November 1, 1987, such sales shall be set aside on motion by the court to which the execution is returnable unless the party causing the execution to be issued:

a. Causes a written notice of sale, executed by the sheriff if executed on or after November 1, 1987, containing the legal description of the property to be sold and the date, time and place where the property will be sold to be mailed, by first-class mail, postage prepaid, to:

i. The judgment debtor; and

ii. Any holder of an interest of record in the property to be sold whose interest is sought to be extinguished, except mechanic's and materialmen's lien claimants, provided that the instrument evidencing such interest was filed prior to the filing of the notice of the pendency of the action; and

iii. Any mechanic's or materialmen's lien claimant whose lien claim has not expired, is sought to be extinguished and either:

(a) Has been perfected, either before or after the filing of the notice of the pendency of the action, or

(b) Has not been perfected, but of which the party causing the execution to be issued has notice;

at least ten (10) days prior to the date of the sale, if the names and addresses of such persons are known; and

b. Causes publication notice, executed by the sheriff if executed on or after November 1, 1987, to be given in conformity with 12 O.S.A. §764(a)(2); and

c. Files in the case an affidavit of proof of mailing and of publication or posting; and

d. Causes such sale to be held at least thirty (30) days after the date of first publication of the notice required in 12 O.S.A. §764(a)(2).

The record of the proceedings should reflect that such steps have been taken.

Authority: 12 O.S.A. §§764, 2004.2; 42 O.S.A. ch. 3; *Cate v. Archon Oil Co., Inc.*, 695 P.2d 1352 (Okla. 1985); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment: 1. 12 O.S.A. §§764 and 2004.2 were amended effective November 1, 1987, to provide the specific notice requirements set forth above.

2. 12 O.S.A. §766 authorizes an under sheriff or deputy sheriff to execute the notice required by 12 O.S.A. §764 as amended effective November 1, 1987.

Caveat: The issue of whether an execution sale of an oil and gas leasehold interest is a sale of real property or a sale of personal property has not been decided by the Oklahoma Supreme Court. See *Cate v. Archon Oil Co.*, *supra*.

## B. NOTICE OF CONFIRMATION OF SALE.

1. On or after November 1, 1986. As to all sheriff's sales of real property upon general or special execution, for which the writ of execution was returned on or after November 1, 1986, but prior to November 1, 1987, the party causing the execution to be issued shall:

a. Cause a written notice of hearing on the confirmation of the sale to be mailed, by first-class mail, postage prepaid, to the following persons and entities whose names and addresses are known:

i. The judgment debtor; and

ii. Any holder of record of an interest in the property; and

iii. All other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property;

at least ten (10) days before the hearing on the confirmation of sale; and

b. If the name or address of any such person is unknown, cause publication notice to be given in conformity with 12 O.S.A. §765(a)(1); and

c. File in the case an affidavit of proof of mailing and, if required, of publication.

The record of the proceedings should reflect that such steps have been taken.

Authority: 12 O.S.A. §765; *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment: 12 O.S.A. §765 was amended effective November 1, 1986, setting forth the specific notice requirements listed above.

2. **On or after November 1, 1987.** As to all sheriff's sales of real property upon general or special execution, for which the writ of execution was returned on or after November 1, 1987, the party causing the execution to be issued shall:

a. Cause a written notice of hearing on the confirmation of the sale to be mailed, by first-class mail, postage prepaid, to the following persons and entities whose names and addresses are known:

i. All persons to whom mailing of the notice of the execution sale was required to be made pursuant to 12 O.S.A. §764; and

ii. The high bidder at such sale;

at least ten (10) days before the hearing on the confirmation of sale; and

b. If the name or address of any such person is unknown, cause publication notice to be given in conformity with 12 O.S.A. §765(a)(1); and

c. File in the case an affidavit of proof of mailing and, if required, of publication.

The record of the proceedings should reflect that such steps have been taken.

Authority: 12 O.S.A. §§764, 765; *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306; *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983).

Comment: 12 O.S.A. §§764, 765 and 2004.2 were amended effective November 1, 1987, setting forth the specific notice requirements and limitations thereon set forth above.

History: This standard was developed as a result of *Cate v. Archon*, *supra*. It was contained in the 1986 Report of the Title Examination Standards Committee, 57 O.B.J. 2677, 2681-82 (1986). After that publication, the Committee received several suggestions from members of the Real Property Section. The Executive Committee of the Section amended the recommendation substantially before submission to the Section. As amended, the recommendation was approved by the Section, November 20, 1986, and adopted by the House of Delegates, November 21, 1986.

The 1987 Title Examination Standards Committee, in its report, 58 O.B.J. 2839, 2843 (1987) recommended several changes in the standard which were approved by the Real Property Section, November 12, 1987, and adopted by the House of Delegates, November 13, 1987. The effective dates in pre-existing material were expressed in different words. For example "After March 22, 1985" became "On or after March 23, 1985". Parts "A.3." and "B.2." were added to conform the standard with amendments to 12 O.S.A. §§764, 765 and 2004.2. The "Caveat" was moved from the former end of part "A." to the new end thereof.

## 12.6 RETURN OF WRITS OF SPECIAL EXECUTION

A. The 60 day time limit for a return of execution imposed by 12 O.S.A. §802 does not apply to special executions.

B. The failure of the Sheriff to return a writ of special execution on or before a return date set by the court is an irregularity which is cured by confirmation of the sale by the court.

Authority: 12 O.S.A. §732; *Price v. Citizens' State Bank of Mediapolis*, 23 Okla. 723, 102 P. 800 (1909).

History: This standard was recommended by the 1990 Report of the Title Examination Standards Committee, 61 O.B.J. 2842, 2870-77 (1990), to address the applicability of 12 O.S.A. §732 to writs of special execution. The Committee's recommendation was approved by the Real Property Section, November 15, 1990, and adopted by the House of Delegates, November 16, 1990, 61 O.B.J. 3058, 3064.

## **12.7 PROPERTY ACQUIRED BY FARM CREDIT SYSTEM; RIGHT OF FIRST REFUSAL**

A. After January 6, 1988, agricultural real estate acquired by an institution of the Farm Credit System (a Federal Land Bank, a Farm Credit Bank or a Production Credit Association) as a result of a loan foreclosure or a voluntary conveyance from a borrower is subject to a right of first refusal vested in the "previous owner" to repurchase or lease the property. A "previous owner" is the person or entity from which or whom the Farm Credit System lender acquired title, by foreclosure or by voluntary conveyance in lieu of foreclosure, to land which had been mortgaged to such lender to secure the debt of such previous owner or of another.

B. If the previous owner waived his right of first refusal, the original or an authentic copy of the executed waiver should be furnished and may be recorded, with an appropriate affidavit where required.

C. Where the property was not sold to the previous owner, and no waiver was obtained, the examiner should be furnished with the following:

1. Evidence of notification by the lender to the previous owner by certified mail, at least 30 days (15 days for notifications between January 6, 1988 and August 17, 1988) prior to private sale to any other party, of the previous owner's right to purchase the property at the appraised value as determined by an accredited appraiser, and of the previous owner's right to offer to purchase the property at a price less than the appraised value.

2. If such sale was a private sale, an affidavit from an officer or agent of the lender that:

- a. the previous owner failed to submit any offer to purchase within 30 days (15 days for offers between January 6, 1988 and August 17, 1988) after notice; or

- b. the previous owner submitted an offer to purchase within the requisite time, but the offer was for less than the appraised value, and that the lender gave notice to the previous owner of the rejection of the previous owner's offer within 15 days after receipt of such offer, and that the institution thereafter sold the property to a third party for a stated price which is equal to or greater than the previous owner's offer; or

- c. after the lender rejected an offer from the previous owner to purchase the property at a price less than the appraised value, and the lender thereafter sold the property to a third party for a price less than the previous owner's offer, or on different terms and conditions from those previously extended to the previous owner, the lender first gave notice to the previous owner of its intention to accept an offer from a third party for a price less than the previous owner's offer, or on terms and conditions different from those first extended to the previous owner, by certified mail, and that the previous owner did not, within 15 days from such certified mail notice, submit an offer in writing to purchase the property under such different terms and conditions.

3. If such sale occurred at public auction or pursuant to some other public bidding procedure:

- a. proof that the previous owner was notified by certified mail in advance of the public auction, competitive bidding process or other similar public offering by a notice containing the minimum bid amount, if any, required to qualify as acceptable to the institution, and also containing the terms and conditions to which the sale would be subject; and

- b. an affidavit from an agent or officer of the lender, if the property was sold to a third party other than the previous owner, that the previous owner did not bid an amount equal to or more than the amount for which the property was sold to the third party.

D. A certified mail notice is sufficient, whether or not received or accepted by the previous owner, if mailed one time to the last known address of the previous owner.

Authority: 12 U.S.C.A. §2219a (Farm Credit Act of 1971, §4.36, as amended by Agricultural Credit Act of 1987, Pub. L. No. 100-233 (January 6, 1988), tit. I, §108, 101 Stat. 1582 and Agricultural Credit Technical Corrections Act of 1988, Pub. L. No. 100-399 (August 17, 1988), tit. I, §104, 102 Stat. 990).

Comment: Note that the right of the first refusal provisions apply only to "agricultural real estate". Some Farm Credit System loans are made on rural housing and not agricultural real estate. Such rural housing would not be affected by and is not subject to the right of first refusal legislation. Farm Credit Administration regulations provide that the "previous owner" includes the prior record owner where the owner's land was used as collateral for the loan even though the prior record owner was not a borrower, 12 C.F.R. §614.4522(a)(2). Similar provisions apply to leases of agricultural property owned by Farm Credit System institutions. The "accredited appraiser" referred to in the statute is not elsewhere defined. The Ninth Farm Credit District, which includes Oklahoma, accredits certain appraisers, and utilizes such approved appraisers in determining the appraisal values.

Loans in a pool backing securities or obligations guaranteed by the Federal Agricultural Mortgage Corporation ("Farmer Mac") are exempted from the right of first refusal provisions, even if held by, originated by, or serviced by Farm Credit System institutions, provided that the borrower was given notice of such exemption at the time of loan origination, and opportunity to refuse to allow the loan to be pooled; see section 8.9 of the Farm Credit Act of 1971, 12 U.S.C.A. §2279aa-9. Loans in such a pool which were originated by non-Farm Credit System institutions are not subject to the statutory right of first refusal, even if later assigned to a Farm Credit System entity.

History: The federal Agricultural Credit Act of 1987 created a right of first refusal for former mortgagors of agricultural real estate when property they have deeded to or lost through foreclosure to a Farm Credit System Institution ("FCSI") is to be sold by the FCSI. The 1990 Report of the Title Examination Standards Committee proposed standard 12.7 to assist title examiners when a foreclosure or deed in lieu of foreclosure in favor of an FCSI is encountered in the chain of title, 60 O.B.J. 2842, 2870-77 (1990). The Committee's proposal was approved by the Real Property Section, November 15, 1990, and adopted by the House of Delegates, November 16, 1990, 61 O.B.J. 3058, 3064.

## 5. Simplification of Land Titles Act

### 18.6 ABSTRACTING

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

- A. In sales by guardians, executors or administrators, the deed and order confirming the sale.
- B. In probate and partition proceedings in district court, the final decree and estate tax clearance unless not required by 58 O.S.A. §912 or 68 O.S.A. §815(d) or unless the estate tax lien is barred.
- C. In general jurisdiction court sales under execution, the petition and other instruments, if any, showing defendants sued, the service upon defendants or their entry of appearance, the judgment, the deed and the court order directing the delivery thereof.
- D. In general jurisdiction court partitions, or adjudications of ownership, the petition and other instruments, if any, showing defendants sued, the service upon defendants or their entry of appearance, the final judgment, any deed on partition, and any court order directing the delivery thereof.

The abstractor can make in substance the following notation: "other proceedings herein omitted by reason of 16 O.S.A. §61 *et seq.*, and Title Examination Standards Chapter 18."

Authority: 16 O.S.A. §62(a), (c) & (d).

Comment: The foregoing will disclose all showing needed under the applicable statutory provisions and the standards in this chapter.

Caveat: If the final decree is incomplete, uncertain, vague or ambiguous, the same is subject to judicial interpretation, notwithstanding the rule that a decree of distribution made by the court having jurisdiction of the settlement of a testator's estate, entered after due notice and hearing, is conclusive, in the absence of fraud, mistake or collusion, as to the rights of parties interested in the estate to all portions of the estate thereby ordered, and capable of being then distributed under the Will, unless reversed or modified on appeal and such decree is not subject to collateral attack. In case the final decree is incomplete, uncertain, vague or ambiguous, the title examiner is justified in requiring a full transcript of such proceedings.

History: Adopted December 1964. Printed as Proposal No. 5 of the 1964 Real Property Committee, 35 O.B.A.J. 2045 (1964); and see Exhibit E, *id.* at 2050-51. Approved, upon recommendation of Real Property Section, by House of Delegates, 36 O.B.A.J. 179, 182 (1965). As a result of a proposal by the 1970 Real Property Committee's Supplemental Report, printed as Exhibit C, 41 O.B.A.J. 2676-77 (1970), approved by the Real Property Section on December 3, 1970, and adopted by the House of Delegates on December 4, 1970, 42 O.B.A.J. 706 (1971), a short paragraph was dropped from "Comment". Its sense was carried over and expanded into the "Caveat" which was added by the same action. The 1983 Report of the Title Examination Standards Committee recommended substantial change in paragraph "B." of the standard, 54 O.B.J. 2379, 2383 (1983). The recommendation was approved by the Real Property Section on November 3, 1983, and adopted by the House of Delegates on November 4, 1983.

## 6. Marketable Record Title Act

### 19.11 THIRTY-YEAR ABSTRACT

The Marketable Record Title Act has not eliminated the necessity of furnishing an abstract of title for a period in excess of thirty (30) years.

Authority: 16 O.S.A. §76; L. Simes & C. Taylor, Model Title Standards, Standard 4.12, at 35 (1960).

Similar Standard: Neb., 44.

Comment: Section 76 of the Act names several interests which are not barred by the Act, to-wit: the interest of a lessor as a reversioner; mineral or royalty interests; easements created by a written instrument; subdivision agreements; interests of the U.S., etc. These record interests may not be determined by an examination of the abstract for a period of no more than thirty (30) years.

Furthermore, in all cases, the abstract must go back to the conveyance or other title transaction which is the "root of title"; and it will rarely occur that this instrument was recorded precisely thirty years prior to the present time. In nearly every case the period, from the recording of the "root of title" to the present, will be somewhat more than thirty (30) years.

History: Adopted December 1964. Printed as a part of Proposal No. 12 of 1964 Real Property Committee, 35 O.B.A.J. 2045, 2046 (1964); and see Exhibit H, *id.* at 2058-59. Approved, upon recommendation of Real Property Section, by House of Delegates, 36 O.B.A.J. 179, 182 (1965). As a result of a proposal by the 1970 Real Property Committee's Supplemental Report, printed as Exhibit H, 41 O.B.A.J. 2676, 2678 (1970), approved by the Real Property Section on December 3, 1970, and adopted by the House of Delegates on December 4, 1970, 42 O.B.A.J. 706, the last sentence of the standard making it clear that the amendment to the Marketable Record Title Act will not eliminate the necessity of furnishing an abstract of title in excess of thirty (30) years after July 1, 1972, was added. Pertinent statutory authority, relating to the amendment, has been added by the editor pursuant to the directive in the Committee's Supplemental Report, Exhibit I, 41 O.B.A.J. 2676, 2679 (1970). All references to prior 40-year period deleted, 30 years substituted, and dates in "Comment" corrected to agree with 30-year period as per direction of House of Delegates, see Minutes of House for 1977, at 93-96.



## 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 first 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 first 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 title 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 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." and "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, only the patent, the conveyance from the allottee, the Certificate of Competency, certificate as to degree of blood of the allottee and the material under "B.", "C.", "D." and "E." need be shown.

The abstractor 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."

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

Comment: 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, mechanic 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 requires either the book and page of recording or the date and place of recording or such other information as will enable the abstractor to locate the instrument of record.

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

History: Adopted December 5, 1969. Resolution No. 1, 1969 Real Property Committee, 40 O.B.A.J. 2405 (1969); and Exhibit A, id. at 2406-2407. Approved by Real Property Section and adopted by House of Delegates, 41 O.B.A.J. 287 (1970). Citation of act amended by editor, 1978, to agree with repeal of §81, 1970 Okla. Sess. Laws, ch. 92, §5, reference to prior 40-year period deleted and 30 years substituted, see Minutes of House of Delegates for 1977, pages 93-96.

Amended December 3, 1982. Amendment proposed by Report of 1982 Title Examination Standards Committee, 53 O.B.J. 2731, 2734-35 (1982). Proposal amended by Real Property Section, December 2, 1982, and approved as amended. Adopted as amended by House of Delegates.

## **7. 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 or 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 abstractor 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 Bond of Trustee, 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 ten (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:

i. 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;

ii. 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 & 606; 11 U.S.C.A. §44(g).

History: Adopted December 3, 1982. Proposed by Report of 1982 Real Property Section, 53 O.B.J. 2731 at 2735-2736 (1982), approved by Real Property Section, December 2, 1982, and adopted by House of Delegates.

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 (and if the proceedings have not been properly dismissed prior to a conveyance or other transfer of title to the property), the title examiner should be furnished with and review duly certified or otherwise reliable evidence of the following matters (in addition to 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 any other such claim of exemption by a dependent of the debtor on behalf of the debtor; and

2. Satisfactory evidence 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 any order by the bankruptcy court overruling or otherwise resolving such objection.

Authority: 11 U.S.C.A. §§521-522; Bankruptcy Rules 1002 & 1007; 3 L. King, Collier on Bankruptcy §522.26 (15th ed. 1984).

Comment: Title examiners should be aware that even though property is exempt, a mortgagee or other lien creditor may not commence or continue a foreclosure action against the debtor or obtain a conveyance from the debtor, so long as the automatic stay continues in effect. Unless relief from the automatic stay has been obtained as to the debtor (by final order of the bankruptcy court to permit the action), the stay continues until the earliest of (a) the closing of the bankruptcy case, (b) the dismissal of the bankruptcy case or (c), in a Chapter 7 case concerning an individual or in a case under Chapter 9, 11, 12 or 13, the grant or denial of a discharge, 11 U.S.C.A. §362.

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

1. If abandoned by a bankruptcy trustee (except where the trustee is the United States Trustee), the order by the bankruptcy court approving the trustee's qualifying bond (or other satisfactory evidence that the trustee filed with the court a bond in favor of the United States conditioned on the faithful performance of his official duties), or (if a blanket bond has been filed pursuant to Bankruptcy Rules 2010 or X-1004) the trustee's acceptance of his election or appointment (except where deemed accepted pursuant to Rules 2008 or X-1004, on or after August 1, 1987); or if abandoned by a debtor in possession, satisfactory evidence that no trustee was appointed in the case; and

2. Either:

a. The notice by the trustee or debtor in possession of his or her intention to abandon the property, and satisfactory evidence 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, the order by the bankruptcy court authorizing or directing such abandonment, after such notice and hearing as required by the bankruptcy court, by the Bankruptcy Rules and/or by local court rules.

Authority: 11 U.S.C.A. §§102, 322 & 554; Bankruptcy Rules 2008, 2010 & X-1004; 4 L. King, Collier on Bankruptcy §554.02 (15th ed. 1984).

Comment: Upon abandonment, control of the property abandoned reverts to the debtor. In such event, unless the automatic stay has terminated as described in the Comment following section A above, a mortgagee or other lien creditor must obtain relief from the automatic stay as to the debtor by final order of the bankruptcy court before either (1) foreclosing the debtor's interest or (2) obtaining a conveyance from the debtor, 11 U.S.C.A. §362.

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. The order discharging the trustee, if one has been appointed, and closing the estate; and

2. The bankruptcy proceedings showing 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 & 554; 4 L. King, Collier on Bankruptcy ¶554.02 (15th ed. 1984).

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 (except where the trustee is the United States Trustee), the order by the bankruptcy court approving the trustee's qualifying bond (or other satisfactory evidence that the trustee filed with the court a bond in favor of the United States conditioned on the faithful performance of his official duties), or (if a blanket bond has been filed pursuant to Bankruptcy Rules 2010 or X-1004) the trustee's acceptance of his election or appointment (except where deemed accepted pursuant to Rules 2008 or X-1004, on or after August 1, 1987); or if sold by the debtor in possession, satisfactory evidence that no trustee was appointed in the case as of the date of the conveyance;

2. The notice of such sale, in accordance with the Bankruptcy Code, the Bankruptcy Rules and/or local court rules, or the order of the bankruptcy court authorizing a different form of notice or dispensing with such notice;

3. The bankruptcy proceedings showing that (a) no objections to such sale were raised, or if such objections were raised, the order overruling such objections or otherwise authorizing the sale, and (b) such sale has not been stayed pending an appeal from such order; and

4. The conveyance by the trustee or the debtor in possession.

Authority: 11 U.S.C.A. §§102(1), 322, 363(b), 363(m) & 1107; Bankruptcy Rules 2002, 2008, 2010, 6004(e)(2), X-1004 & X-1008; 2 L. King, Collier on Bankruptcy ¶554.02 (15th ed. 1984).

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. Except where the trustee is the United States Trustee, the order by the bankruptcy court approving the trustee's qualifying bond (or other satisfactory evidence that the trustee filed with the court a bond in favor of the United States conditioned on the faithful performance of his official duties), or (if a blanket bond has been filed pursuant to Bankruptcy Rules 2010 or X-1004) the trustee's acceptance of his election or appointment (except where deemed accepted pursuant to Rules 2008 or X-1004, on or after August 1, 1987);

b. If in a Chapter 11 case, satisfactory evidence that the bankruptcy court has not entered an order precluding the trustee from operating the debtor's business; and

c. The conveyance by the trustee.

2. If the property is sold by a debtor in possession, satisfactory evidence that no trustee was appointed in the case as of the date of the conveyance, and the conveyance by the debtor in possession.

Authority: 11 U.S.C.A. §§322, 363, 721, 1108 & 1304(b); Bankruptcy Rules 2008, 2010 & X-1004; 2 L. King, Collier on Bankruptcy ¶363.04 (15th ed. 1984); 4 L. King, id. §721.04(1); 5 L. King, id. ¶¶1108.03 & 1304.01(3).

F. Where the property is sold free and clear of any interest in such property of any entity other than the bankruptcy estate:

1. The instruments described in Paragraphs (D) and (E) above, as appropriate; and

2. The bankruptcy proceedings showing that such entity's interest in the property attached to the proceeds of such sale, that such entity consented to the sale, or that such entity received notice of such sale (or, for sales on or after August 1, 1987, that such entity was served, in accordance with Bankruptcy Rule 7004, with notice of the motion for authority to sell the property free and clear of such interest, which notice included the date of the hearing on the motion and the time within which objections may be filed and served upon the trustee or debtor in possession) and raised no objection, or if an objection was raised, the order overruling such objection or otherwise authorizing the sale free and clear of such interest.

G. In a Chapter 11 case, where the property is the subject of a plan of reorganization of the debtor:

1. The notice (in accordance with the Bankruptcy Rules and/or local court rules) of the filing of the disclosure statement, and the order approving the disclosure statement;

2. Satisfactory evidence of the mailing (in accordance with the Bankruptcy Rules and/or local court rules) to all creditors and equity security holders, of:

- a. The plan, or a court approved summary of the plan;
- b. The disclosure statement approved by the court;
- c. Notice of the time within which acceptances and rejections of the plan may be filed;
- d. Notice of any date fixed for the hearing on confirmation of the plan; and
- e. Such other information as may have been directed by the court;

together with satisfactory evidence of the mailing of a form of ballot conforming to Official Form No. 30, to creditors and equity security holders entitled to vote on the plan;

3. The order confirming the plan; and

4. The plan (or such portion(s) thereof to which the disposition of the property is subject).

Authority: 11 U.S.C.A. §§1123, 1125, 1128, 1129, 1141 & 1142; Bankruptcy Rules 3016, 3017 & 3020.

Comment: In some instances it may be appropriate to furnish to the title examiner a duly certified copy of the bankruptcy case docket; while not necessarily conclusive of the issue, the case docket may indicate to the examiner's satisfaction whether certain events have or have not occurred-the "satisfactory evidence" referred to in this Standard. (See, Bankruptcy Rule 5003).

History: Adopted December 3, 1982. Standard proposed by Report of 1982 Title Examination Standards Committee, 53 O.B.J. 2731, 2736-38 (1982), approved by Real Property Section, December 2, 1982, and adopted by House of Delegates. Amendments proposed by 1985 Report of the Title Examination Standards Committee, 56 O.B.J. 2535, 2539-41. On November 14, 1985, the Real Property Section amended the proposal by striking the parenthetical clause in (F)(2), Report, supra, 2541. On November 15, 1985, the House of Delegates adopted the amended proposal, 57 O.B.J. 5, 7 (1986) and 57 O.B.J. 147 (1986).

The 1986 Report of the Committee recommended substantial changes in this standard, 57 O.B.J. 2677, 2688 (1986). The report as published inadvertently indicated that section (F) was to be deleted. The proposal was amended by the Executive Committee of the Real Property Section to retain section (F). The amended proposal was approved by the Section November 20, 1986, and approved by the House of Delegates November 21, 1986.

The 1987 Title Examination Standards Committee Report recommended several amendments to this standard, 58 O.B.J. 2839, 2847-48 (1987). In the first sentence of the "Comment" to part (A), the words "or other lien creditor" were added and the words "so long as" were substituted for the word "unless". In the second sentence of the same part, all that which follows the parenthetical clause was added. In part (B)(1) following the first parenthetical clause, the words "or abstract of" and the second parenthetical clause were added. In the "Authority" in part (B), Bankruptcy Rule 2008 was added. In the Comment to part (B), the clause "unless the automatic stay . . . above" and the words "or other lien creditor" were added to the second sentence. In part (D)(1), the words "or abstract" were added. In the "Authority" following part (D), Bankruptcy Rule 2008 was added. In part (E)(1)(a), the final parenthetical language was added. In the "Authority" following part (E), Bankruptcy Rule 2008 was again added. In part (F)(2), the parenthetical clause was added. These proposals were approved by the Real Property Section, November 12, 1987, and adopted by the House of Delegates, November 13, 1987.

The Title Examination Standards Committee, in its 1988 Report, 59 O.B.J. 3098, 3106-09, proposed the addition of (G). Numerous other changes to conform the standard with recent amendments to the Bankruptcy Act and to the Bankruptcy Rules were recommended. Several corrections to numbers in citations were made by the Executive Committee of the Section before this proposed amendment was submitted to the Real Property Section which approved the proposed amendments as corrected, December 8, 1988. The House of Delegates adopted the amended standard as corrected, December 9, 1988.

The 1989 Title Examination Standards Committee Report, 60 O.B.J. 2502, 2515-18 (1989), proposed amending the standard's requirements regarding review of documents filed in a bankruptcy case to conform to the most current revision of the Bankruptcy Rules. In addition, the amendment proposed changing the language of the introductory paragraph from "review the following instruments" to "review duly certified or otherwise reliable evidence of the following matters"; adding parallel parenthetical language to paragraphs (B)(1), (D)(1) and (E)(1); revising paragraphs (G)(3) & (4); and adding a "Comment". These proposals were approved by the Real Property Section on November 16, 1989, and adopted by the House of Delegates on November 17, 1989, 60 O.B.J. 2941, 2952 (1989).

## 8. FDIC/FSLIC/RTC

### 24.1 BANKS

A. With regard to a state bank chartered by the Oklahoma State Banking Board for which the Federal Deposit Insurance Corporation ("FDIC") has been appointed liquidating agent, title to all assets and property of such bank shall be deemed transferred to and vested in the FDIC when a certificate issued by the Oklahoma State Bank Commissioner evidencing the appointment of the FDIC as such liquidating agent has been filed in the office of the county clerk of the county where such bank was located.

B. With regard to a national bank for which the FDIC has been appointed receiver, title to all assets and property of such bank shall be deemed to have been transferred to and vested in the FDIC upon the appointment of the FDIC as receiver of such national bank by the United States Comptroller of the Currency, and the FDIC shall thereupon be deemed to have all the rights, powers and privileges then possessed by or thereafter granted by law to a statutory receiver of a national bank.

C. Marketability, with respect only to the matter of the succession as set forth above of the FDIC to title to interests in real property formerly owned by a bank, is established if the record being examined contains a copy of the applicable certificate of appointment (with respect to a state bank) or a declaration of insolvency (with respect to a national bank) in favor of the FDIC.

Authority: 6 O.S.A. §1205(c); 12 U.S.C.A. §§191, 1821(c) & (d).

Comment: 1) FDIC is a special statutory receiver and is distinguished from the more familiar equity receivers appointed by the Court, which do not hold title in their own names.

2) The condition of such title in the FDIC is identical with the condition of title in the name of the failed bank. Any marketability defect in such title shall remain extant until cured by appropriate means.

History: This standard was proposed by the 1988 Report of the Title Examination Standards Committee, 59 O.B.J. 3098, 3109. The Executive Committee of the Real Property Section added the additional language between the word "appointment" and the word "in" near the end of "C." before the proposal was submitted to and approved by the Real Property Section, December 8, 1988. It was adopted as amended by the House of Delegates, December 9, 1988.

## 24.2 SAVINGS AND LOAN ASSOCIATIONS AND SAVINGS BANKS

A. With regard to a savings and loan association or savings bank ("S&L") that is chartered by the State of Oklahoma for which the Federal Savings and Loan Insurance Corporation ("FSLIC") or one of its successors has been appointed Receiver, title to all assets and property of such S&L shall be deemed transferred to and vested in the FSLIC or one of its successors upon the execution of a certificate by the Oklahoma State Bank Commissioner evidencing its appointment as such Receiver. Such certificate is filed in the office of the County Clerk of the County where the principal office of the S&L is located.

B. With regard to an S&L chartered under federal law for which the FSLIC or one of its successors has been appointed Receiver, title to all assets and property of such S&L shall be deemed to have been transferred to and vested in the FSLIC or one of its successors upon its appointment as Receiver by resolution of the Federal Home Loan Bank Board ("FHLBB") or one of its successors, and the FSLIC or one of its successors shall thereupon be deemed to have all the rights, powers and privileges then possessed by or thereafter granted by law to a statutory receiver of a federal S&L.

C. Prior to August 9, 1989, deeds and other instruments from the FSLIC, as Receiver for an S&L, were executed by Special Representatives appointed by the FHLBB. FSLIC Special Representatives were appointed in the FHLBB Resolutions Appointing the Receivers.

D. If the FSLIC, FDIC or FHLBB, or any of their successors, transferred all interests in real property from an S&L to an existing or newly federally chartered S&L, such transfers may be evidenced by a Memorandum of Transfer and/or Assignment filed in each county in which the S&L owned interests in real property. A title examiner may rely upon a recitation in a deed or release of mortgage that the transferee association is the "successor in title" to the transferor S&L "as evidenced by the memorandum of transfer and/or assignment" and further reciting the book and page of recording and date and county of filing of such memorandum.

Authority: 18 O.S.A. §381.77(C) and (D); 12 U.S.C.A. §§1464(d)(6), and 1729(a)-(c); 12 C.F.R. §§547.1 *et seq.*; Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73 (Aug. 9, 1989), 103 Stat. 183.

Comment: On August 9, 1989, the FSLIC and FHLBB were abolished with the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") which divided and transferred the duties, responsibilities, assets, liabilities, *etc.* of those former entities among the FDIC, the Office of Thrift Supervision ("OTS"), the FSLIC Resolution Fund, the Resolution Trust Corporation ("RTC"), the Federal Housing Finance Board ("FHFB") and other federal agencies.

Basically, all assets and liabilities of the FSLIC were transferred to the FSLIC Resolution Fund, EXCEPT those assets and liabilities that were transferred to the RTC. All assets and liabilities held by receivers of S&Ls closed after January 1, 1989, were transferred to the RTC. The authority of the FHLBB was transferred to the Director of the OTS; EXCEPT all authority with regard to the Federal Home Loan Banks was transferred to the FHFB and EXCEPT certain FHLBB powers that were transferred to the FDIC or the Federal Home Loan Mortgage Corporation ("FHLMC").

The RTC has no employees. Rather it (and its predecessor, the FSLIC) has employed the FDIC, under a Management Agreement, to perform many of the duties of the RTC. The FDIC can be removed from its managerial position only with Congressional approval.

With respect to transfers, mergers, consolidations, *etc.*, by receivers or conservators, Section 212(a) of FIRREA specifically authorizes the FDIC to merge any insured depository institution (a new term to describe a savings and loan association, savings bank or bank) with another or to "transfer any asset or liability of the institution in default *without any approval, assignment, or consent* with respect to such transfer" except, if the transferee is another depository institution, the approval, if necessary, "of the appropriate Federal banking agency for such institution". (Emphasis added.)

Section 501 of FIRREA provides that the RTC, as successor to the FSLIC as receiver or conservator, shall have the same powers and rights to carry out its duties with respect to S&Ls as the FDIC has under the Federal Deposit Insurance Act (including the transfer provision above).

History: Standard proposed by the 1989 Report of the Title Examination Standards Committee, 60 O.B.J. 2502, 2519-20 (1989). The proposal was approved by the Real Property Section on November 16, 1989, and adopted by the House of Delegates on November 17, 1989, 60 O.B.J. 2941, 2952 (1989).

The 1990 Report of the Title Examination Standards Committee, 60 O.B.J. 2842, 2870-77 (1990), recommended revising standard 24.2 to reflect FSLIC's succession by the FSLIC Resolution Fund and the Resolution Trust Corporation. The Committee's recommendation also omitted the former last sentence of paragraph (B) regarding recording of the Federal Home Loan Bank Board resolution in the office of the County Clerk of the County where the principal office of the S&L is located. The Committee's recommendation was approved by the Real Property Section, November 15, 1990, and adopted by the House of Delegates, November 16, 1990, 61 O.B.J. 3058, 3064.



## D. List of the 20 states with Standards

**JOINT ABA/OBA/OCU TITLE EXAMINATION  
STANDARDS RESOURCE CENTER PROJECT  
INDEX FOR TITLE EXAMINATION STANDARDS MATERIALS AVAILABLE AT OCU  
(As of February 19, 1991)**

<u>BOOK NO.*</u>	<u>STATE, MATERIALS</u>	<u>EFFECTIVE DATE (Last Revision)</u>
1.	6A1 COLORADO, TES	1/1/87
2.	7A1 CONNECTICUT, TES	Fall, 1987
3.	9A1 FLORIDA, TES	11/89
4.	10A1 GEORGIA, TES	1972
5.	15A1 IOWA, TES	8/89
6.	16A1 KANSAS, TES	1986
7.	19A1 MAINE, TES	1985
8.	21A1 MASSACHUSETTS, TES	1989
9.	22A1 MICHIGAN, TES	1988
10.	23A1 MINNESOTA, TES	1988
11.	25A1 MISSOURI, TES	1980
12.	27A1 NEBRASKA, TES	1989
13.	29A1 NEW HAMPSHIRE, TES	1/1/88
14.	32A1 NEW YORK, TES	1/30/76
15.	34A1 NORTH DAKOTA, TES	12/7/89
16.	35A1 OHIO, TES	1/89
17.	36A1 OKLAHOMA, TES	11/90
18.	39A1 RHODE ISLAND, TES	11/85
19.	41A1 SOUTH DAKOTA, TES	7/1/88
20.	50A1 WYOMING, TES	7/1/80

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- \*KEY:
- a. The first symbol is a number which represents the state; e.g., "6" equals Colorado, which is the sixth state alphabetically.
  - b. The second symbol is a letter which represents the source of the material; i.e.: A - State, B - Local, and C - Other
  - c. The third symbol is a number which represents the order of receipt; e.g., "35A1" means the material is from Ohio, from the State level and it is the first item received from that source in that State.

\*\*\*\*\*

FOR MORE INFORMATION CONTACT:

Librarian  
Judy Morgan  
OCU Law Library  
23rd & Blackwelder  
Oklahoma City, Oklahoma 73106  
(405) 521-5062

Project Chairman  
Kraettli O. Epperson  
Ames, Ashabranner, Taylor,  
Lawrence, Laudick & Morgan  
6440 Avondale Drive, Suite 200  
Oklahoma City, Oklahoma 73116  
(405) 840-2470

**E. List of Committee Members**

1990 TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION OF THE OKLAHOMA BAR ASSOCIATION

OFFICERS: CO-CHAIRMEN: David P. Rowland and Kraettli Q. Epperson

29 October 90

Name	Phone	Fax						
Allingham, Jane	918 496-8500			Suite 200	5314 South Yale Avenue	Tulsa	74100	
Astle, Dale L.	918 587-6621	582-2228	Guaranty Abstract Company		P. O. Box 3048	Tulsa	74101	
Atherton, Susan V.	918 743-1440				1427 Terrace Drive	Tulsa	74104	
Beaumont, Judi E.	918 581-8200	583-1189	Jones, Givens, Gotcher	Suite 3800, First Nat'l. Twr	15 East Fifth Street	Tulsa	74103	
Butler, David C.	405 233-1456	242-6007	Crowley, Butler, Pickens		P. O. Box 3487	Enid	73702	
Chapman, C. Hayden	405 329-7781		Stead & Chapman	Suite C	102 East Eufaula Avenue	Norman	73069	
Clark, Gary C.	918 592-5555	587-6152	Baker, Hoster, Mc Spadden	800 Kennedy Building		Tulsa	74103	
Cleverdon, Richard	918 583-9700	583-9033		Suite 400, Grantson Building	111 West Fifth Street	Tulsa	74103	
Clinton, Rosemary	918 584-2331		Standard Abstract Company		625 South Detroit Avenue	Tulsa	74120	
Coulson, Scott E.	918 583-1232		Robinson, Lewis et al.	Suite 1500, One Williams Ctr	P. O. Box 1046	Tulsa	74101	
Epperson, Kraettli Q.	405 840-2470	840-5185	Ames, Ashabranner	Suite 200	6440 North Avondale Drive	Oklahoma City	73116	
Gossett, William A.	405 255-5600	255-5843	Garvin, Bonney, Weaver	Suite 300	Security Nat'l. Bank Bldg.	Duncan	73533	
Hardwick, Martha M.	918 749-3313			L.B. 250	5147 South Harvard Avenue	Tulsa	74135	
Holland, Alfred J.	501 239-4012				P. O. Box 335	Paragould, AR	72451	
Howard, Robert E.	918 748-8998		Law Associates, Inc.	Suite 199, London Square	5800 South Lewis Avenue	Tulsa	74105	
Hudacky, Dennis P.	405 841-4338				1328 NW 104th Street	Oklahoma City	73114	
Kelly II, Robert W.	405 236-0509			Suite 2700, City Place Bldg.	204 North Robinson Avenue	Oklahoma City	73102	
Kriegel, M. W. (Rusty)	918 749-9856				2423 South Terwilliger Blvd.	Tulsa	74114	
Kulp, Linda M.	918 496-8500		Kulp & Kulp	Suite 220	5314 South Yale Avenue	Tulsa	74135	
Lanford, Annette S.	918 749-4411	749-4413			3414 South Yale Avenue	Tulsa	74135	
Lyon, Jim A.	405 843-0461			Suite 235	2212 NW 50th Street	Oklahoma City	73112	
Marianos, Teresa W.	405 848-1819	848-2009	Shapiro & Kriesman	770 NE 63rd Street	Post Office Box 18209	Oklahoma City	73154	
Mc Kay, Stanley J.	405 276-5360				315 West Main Street	Marietta	73448	
Mc Kinney, M. Paul	405 273-7240	273-7242			9-11 East Ninth Street	Shawnee	74801	
Moershel, Diane C.	405 236-5938			2270 Liberty Tower	100 North Broadway Avenue	Oklahoma City	73102	
Morrissey, Linda G.	918 584-2047	584-2939			1448 South Carson Avenue	Tulsa	74119	
Neal, Bryan D.	405 733-2717				8000 SE 15th Street	Midwest City	73110	
Newton, G. W. (Bill)	918 749-7721	587-0102	Newton & O'Connor	1400 Boston Bldg., Suite 600	1412 South Boston Avenue	Tulsa	74119	
Nowinski, Matthew J.	918 748-8998		Law Associates, Inc.	Suite 181, London Square	5800 South Lewis Avenue	Tulsa	74105	
Palomar, Joyce D.	405 325-4699	325-6282	College of Law	University of Oklahoma	300 Timberdell Road	Norman	73019	
Postic Jr, Martin (Marty)	405 691-5080		Postic & Bates		2212 Shadowlake Drive	Oklahoma City	73159	
Reynolds, R. Louis	918 747-8900		Eller & Dietrich	Midway Building, Suite 200	2727 East 21st Street	Tulsa	74114	
Rheinberger, Henry P.	405 235-7742	235-6569	Crowe & Dunlevy	1800 Mid-America Tower	20 North Broadway Avenue	Oklahoma City	73102	
Richie, Michael S.	405 841-4302	841-4320	Federal Deposit Ins. Corp		P. O. Box 26208	Oklahoma City	73126	
Roffers, Juley M.	918 585-8141	588-7873	Huffman, Arrington	1000 ONEOK Plaza	100 West Fifth Street	Tulsa	74103	
Rosser IV, M. E. (Mac)	918 583-1777		Boesche, Mc Dermott	Suite 800, ONEOK Plaza	100 West Fifth Street	Tulsa	74103	
Rowland, David P.	918 336-4550	336-1933	Rowland & Rowland		P. O. Box 1436	Bartlesville	74005	
Rowland, Julie T.	918 742-2383	742-5519	Zarbano, Bridger-Riley	Second Floor	5051 South Lewis Avenue	Tulsa	74105	
Schuller, Stephen A.	918 584-1600	585-2444	Barrow Gaddis	Suite 300	610 South Main Street	Tulsa	74119	
Smith, Douglas M.	918 588-4332		Marketing Department	The Williams Companies	P. O. Box 3288	Tulsa	74101	

Name	Phone	Fax					
Stone, Scott W.	405	255-5600	Garvin, Bonney, Weaver	Suite 300	Security Nat'l. Bank Bldg.	Duncan	73533
Weber, James W.	405	840-1344		Suite 220, Broadway 68 Bldg.	6801 N. Broadway Extension	Oklahoma City	73116
Wimbish, John B. (Jack)	918	494-3770	Riddle, Wimbish & Crain	Suite 200, 5314 S. Yale Ave.	P. O. Box 35827	Tulsa	74153

HONORARY MEMBER(S):

Opala, Hon. Marion P.	405	521-3839	Oklahoma Supreme Court	State Capitol Building	2300 N. Lincoln Boulevard	Oklahoma City	73105
Morris, Rita M.	405	360-8116	(O.U. Law School Student)		525 Boulder Court	Norman	73072

## **F. Committee Meeting Schedule for 1991**

### **SCHEDULE OF 1991 MEETING DATES OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE O.B.A. REAL PROPERTY LAW SECTION**

- |                       |               |
|-----------------------|---------------|
| 1. January 19, 1991   | Tulsa - TU    |
| 2. February 16, 1991  | Oklahoma City |
| 3. March 16, 1991     | Tulsa - TCBA  |
| 4. April 13, 1991     | Oklahoma City |
| 5. May 18, 1991       | Tulsa - TCBA  |
| 6. June 15, 1991      | Oklahoma City |
| 7. July 20, 1991      | Tulsa - TCBA  |
| 8. August 17, 1991    | Oklahoma City |
| 9. September 14, 1991 | Tulsa - TCBA  |

All Oklahoma City meetings will be held at the Bar Center at 1901 N. Lincoln Boulevard (NW corner of intersection with Nineteenth Street - enter at rear parking lot entrance).

All Tulsa meetings will be held at the Tulsa County Bar Association Building at 1446 S. Boston Avenue (at the NW corner of Fifteenth Street) except the January meeting, which will be in Room 225 in John Rogers Hall at Tulsa University (3120 East Fourth Place).

All meetings of the Committee are scheduled to begin at 9:30 a.m. and end at approximately 12:00 noon.

Notice of changes in meeting dates will be given as early as possible. You may contact either of the Committee Co-Chairmen, David P. Rowland, at (918) 336-4550, or Kraettli Q. Epperson at (405) 840-2470, for further information.

The dates for the 1991 OBA-CLE Seminar co-sponsored by the Real Property Law Section are: Tulsa - May 10, and Oklahoma City - May 17.

The Annual Meeting of the Real Property Law Section will be held on Thursday, November 14, 1991, at the Westin Hotel in Tulsa.

## IV. ABTRACTER'S CERTIFICATE

# ABSTRACT CERTIFICATE OFFICIALLY CHANGED

*By Kraettli Q. Epperson*

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### INTRODUCTION

At the request of the Oklahoma Land Title Association (OLTA), which is the State abstractor's association, the Real Property Section of the OBA created a working Committee on August 28, 1982, known as the "Abstracting Standards Committee." This Committee is being chaired by Kraettli Q. Epperson of Oklahoma City and includes the following members: Dale L. Astle, Tulsa; Henley Blair, Oklahoma City; Diane Meier, Oklahoma City; Joe Rolston, Oklahoma City; and David Rowland, Bartlesville.

The purpose of this new Committee is to work with the OLTA Uniformity and Standards Committee chaired by Bob Luttrull, Muskogee, which includes the following members: Virginia Austin, Newkirk; Edd Dennis, Oklahoma City; Owen Harper, Bartlesville; and Celestia Williams, Moore. The first major assignment and accomplishment of the joint efforts of these two Committees was the updating and revision of the OLTA Uniform Certificate for Abstracts of Title. Other projects have been discussed and will probably be initiated during the balance of 1983.

The revised Certificate, as submitted, was approved by the OLTA full membership at its annual meeting in Oklahoma City on April 30, 1983.

### CHANGES

The substantive changes to the Certificate are described below, accompanied by a brief discussion of the reason for each change. In addition, a copy of the new Certificate is set out herein.

**Land (new paragraph 1):** The Uniform Commercial Code exception clause [i.e., "(except instruments filed only under the Uniform Commercial Code)"] has been removed since it was redundant and therefore unnecessary. Such instruments, if filed only in the chattels filings, were excepted by the other language in the paragraph since such chattel filings did not "affect title to . . . real estate. . .". Fixture filings are still shown in the abstract since they do "affect title to . . . real estate . . .".

**Acknowledgments (old paragraph 2):** The sentence has been removed which certified "The acknowledgments of all such instruments filed or recorded for a period of less than ten years are statutory, except as is otherwise shown in this abstract." This sentence was deemed unnecessary and removed for two reasons: (1) the determination by an abstractor as to whether an acknowledgment was proper might be construed as the unauthorized practice of law and (2) the current usual practice is to either photocopy the instrument, including the acknowledgement, or to type the acknowledgment in full.

**Court (new paragraph 2):** The paragraph certifying to matters affecting title to real estate as shown in the records of the Court Clerk has been rearranged and expanded to include judgements filed in the County Clerk's office on or after October 1, 1978 (per 12 O.S. §706). The Certificate now excludes those judgments filed on or after October 1, 1978 if filed only in the Court Clerk's office because they do not affect title to real estate unless filed in the County Clerk's office. The word "foreign," which modified the word "executions," has been removed from this paragraph so that the Certificate now expressly certifies as to all "executions" and not just "foreign executions." The old paragraph provided:



### **KRAETTLI Q. EPPERSON**

an Associate with the Oklahoma City law firm of Ferguson and Litchfield, formerly was General Counsel and Vice-President of the Oklahoma City based abstracting and title insurance company, American First Land Title Insurance Co. Currently, he is Vice-Chairman of the OBA Title Examination Standards Committee, Chairman of the OBA Committee on Abstracting Standards, and member of and Secretary to the Board of Directors of the OBA Real Property Section. He also is a member of the Oklahoma City Title Attorneys Association.

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The records of the Office of the Court Clerk of said County disclose that there are no foreign executions, court proceedings, suits pending, nor liens of any kind affecting the title to said real estate in any of the courts of record in said County and there are no judgments or transcript of judgments, indexed and docketed on the judgment docket against any of the following named parties affecting the title to said real estate, except as shown in this abstract.

**Taxes (new paragraph 3):** The paragraph covering taxes has been slightly modified to improve its clarity. An additional sentence has been inserted to separately but expressly certify as to any lien from personal property taxes. The old paragraph provided:

The records of the Office of the County Treasurer of said County disclose:

That said real estate has been assessed for advalorem taxes for each year covered by this certificate for which advalorem taxes could be a lien against real estate; and during said period of time there are no advalorem taxes which are a lien on said property, due and unpaid, nor tax sales thereof unredeemed, nor tax deeds given thereon, except as shown in this abstract. There are no unpaid special assessments certified to the office of the County Treasurer due and unpaid, nor tax sales thereof unredeemed, nor tax deeds given thereon, except as shown in this abstract.

**Qualifications (new paragraph 4):** In order to establish a uniform but accurate statement about the certifying abstractor's qualifications, the former statement that "The undersigned has a complete set of indexes to the records of said county," has been replaced with "The undersigned has a set of indexes in compliance with the standards of the Oklahoma Land Title Association." The reason for this change is that OLTA now accepts for membership not just those abstractors with a complete set of indexes from sovereignty but also those who were granted an abstractor's certificate based on a grandfather clause in 1932, as long as they now have at least a 40-year set of indexes. The procedure of abstracting from sovereignty was not changed.

**Page Numbers and Dates (new last unnumbered paragraph):** For ease of examination and to establish a uniform standard, the page numbers and the certification dates of the subject abstract have been placed at the bottom of the certificate page instead of the top.

### **CONCLUSION**

In conclusion, the abstractor's certificate has been updated to reflect the current status of the law and the language clarified for the mutual benefit of the abstractor and the examiner. If you have any comments or suggestions on the certificate as changed, or on the uniformity of the contents of abstracts in general, please contact me since we will probably continue our joint OLTA—OBA/Real Property Section efforts if additional work is needed.

O.L.T.A. UNIFORM CERTIFICATE  
Adopted \_\_\_\_\_, 1983

STATE OF OKLAHOMA, County of \_\_\_\_\_, ss.

The undersigned, \_\_\_\_\_ [NAME] \_\_\_\_\_, (a corporation,) hereby certifies that:

1. There is shown herein a true and correct abstract of all instruments filed for record or recorded in the Office of the County Clerk of said County during the period covered by this certificate which affect title to the following described real estate:

[LAND DESCRIPTION]

2. The records of the Offices of the Court Clerk and of the County Clerk of said County disclose that there are no executions, court proceedings nor suits pending in any of the Courts of record in said County, nor liens of any kind affecting the title to said real estate, and there are no judgments or transcripts of judgments, against any of the following named parties, either indexed and docketed prior to October 1, 1978 on the judgment docket of the Court Clerk of said County or filed for record or recorded on or after October 1, 1978 in the Office of the County Clerk of said County, affecting the title to said real estate, except as shown in this abstract:

[NAME PARTIES]

3. The records of the Office of the County Treasurer of said County disclose that:

Said real estate has been assessed for ad valorem taxes for each year covered by this certificate for which ad valorem taxes could be a lien against said real estate, and there are no ad valorem taxes levied against said real estate, due and unpaid, which are a lien on said property, nor tax sales thereof unredeemed, nor tax deeds given thereon, except as shown in this abstract:

[space for REAL ESTATE TAX REPORT]

And there are no unpaid special assessments certified to the Office of the County Treasurer, due and unpaid, nor tax sales thereof unredeemed, nor tax deeds given thereon, except as shown in the abstract; and

There are no unpaid personal taxes which are a lien on said real estate, except:

[space for PERSONAL TAX REPORT]

4. The undersigned is a duly qualified and lawfully bonded abstracter and a member in good standing of the Oklahoma Land Title Association and of the American Land Title Association, whose bond is in force at the date of this certificate. The undersigned has a set of indexes in compliance with the standards of the Oklahoma Land Title Association, compiled from the records of said County and not copied from the indexes in the Office of the County Clerk, and the searches covered by this certificate reflect the records of said County and are not restricted to the indexes in the Office of the County Clerk.

This certificate covers sheets No. \_\_\_\_\_ to \_\_\_\_\_, both inclusive, and covers the period  
From \_\_\_\_\_ to \_\_\_\_\_

ABSTRACT No. \_\_\_\_\_

*The Oklahoma Bar Journal*

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## **V. INFORMAL HINTS**

1. All documents in strictly chronological order
  - a. By filing date and time; highlights delay in recording
  - b. A mortgage release to immediately follow mortgage
2. Include entire contents of document
  - a. Not omit pages, absent authority from customer
  - b. Include at least:
    - (1) Grantor
    - (2) Grantee
    - (3) Granting Language
    - (4) Legal Descriptions
    - (5) Signatures
    - (6) Acknowledgements
3. Probate Proceedings
  - a. Show entire proceedings, unless over 10 years old
  - b. If more than 10 years old, at least show final decree and will, especially if a trust is established in will
4. Avoid multiple quarter section abstracts when a full section is requested
  - a. Decrease excessive abstracting costs
  - b. Reduce examination time and expense
5. Specifically list all names checked for judgments, in supplemental abstracts
  - a. Check from last owners in prior base or prior supplemental abstracts
  - b. Avoid judgment gaps

## VI. RESOURCES

- A. Manual of Uniform Abstract Specifications,  
OLTA, 1965
- B. OLTA Abstracter's Handbook,  
OLTA 1985
- C. Land Title Course: A Treatise on Land Titles,  
Revision of 1980, American First Land Title Insurance Co.