UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY: STATUTES, REGULATIONS, CASES, ATTORNEY GENERAL OPINIONS & TITLE EXAMINATION STANDARDS REVISIONS FOR 2014-2015

(Covering July 1, 2014 to June 30, 2015)

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

At:
Boiling Springs State Park, Woodward, OK: September 20, 2016

KRAETTLI Q. EPPERSON, PLLC
MEE MEE HOGE & EPPERSON, PLLP
50 PENN PLACE
1900 N.W. EXPRESSWAY, SUITE 1400
OKLAHOMA CITY, OKLAHOMA 73118

PHONE: (405) 848-9100
FAX: (405) 848-9101

E-mail: kqe@meehoge.com
Webpage: www.EppersonLaw.com
www.MeeHoge.com

(C:\mydocuments\bar&papers\papers\293Title Update(14-15)(Boiling Springs--Sep 2016)

KRAETTLI Q. EPPERSON

POSITION: Partner: MEE MEE HOGE & EPPERSON, PLLP
1900 N.W. Expressway, Suite 1400, Oklahoma City, OK 73118
Voice: (405) 848-9100; Fax: (405) 848-9101
E-mail: kqe@MeeHoge.com; website: www.EppersonLaw.com

COURTS: Okla. Sup. Ct. (May 1979); U.S. Dist. Ct., West. Dist of Okla. (Dec. 1984)

EDUCATION: University of Oklahoma [B.A. (PoliSci-Urban Admin.) 1971];
State Univ. of N.Y. at Stony Brook [M.S. (Urban and Policy Sciences) 1974]; &
Oklahoma City University [J.D. (Law) 1978].

PRACTICE: Oil/Gas & Real Property Title Litigation (Curative; Appeals; Expert Consultant/Witness)
Oil/Gas & Surface Title Opinions
Mediation and Arbitration, and Receiverships
Commercial Real Estate Acquisition & Development.

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

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

SELECTED PUBLICATIONS:
"Marketable Record Title: A Deed Which Conveys Only the Grantor's 'Right, Title and Interest' Can Be A 'Root of Title'", 85 OBJ 1104 (May 17, 2014)
"The Need for a Federal District Court Certificate in All Title Examinations: A Reconsideration", 83 OBJ 2367 (Nov. 3, 2012)
"The Real Estate Mortgage Follows the Promissory Note Automatically Without an Assignment: The Lesson of BAC Home Loans", 82 OBJ 2938 (Dec.10, 2011)

SPECIAL HONORS: Okla. Bar Assn. 1997 Maurice Merrill *Golden Quill Award*;
Okla. Bar Assn. 1990 Earl Sneed *Continuing Legal Education Award*;
Okla. Bar Assn. 1990 Golden Gavel Award: *Title Exam. Standards Committee*

TABLE OF CONTENTS

AUTHOR'S RESUME

I. INTRODUCTION

II. STATUTORY CHANGES

III. REGULATORY CHANGES

IV. CASE LAW

V. ATTORNEY GENERAL OPINIONS

VI. TITLE EXAMINATION STANDARDS CHANGES

A. EXAMINING ATTORNEY'S RESPONSIBILITIES

B. NEED FOR STANDARDS

C. NEWEST CHANGES TO TITLE STANDARDS

- 2015 Report of the Title Examination Standards Committee of the Real Property Section

D. LATEST TES COMMITTEE AGENDA WITH SCHEDULE OF MEETINGS

APPENDICES

A. OKLAHOMA T.E.S. COMMITTEE MEMBERS (FOR PRIOR YEAR)

B. NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER REPORT

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

I. INTRODUCTION

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

The following materials reflect a listing of selected changes in the law of Oklahoma related to real property title issues, arising over the 12 months following June 30, 2013, including any (1) statutes enacted during the most recent State legislative session, (2) new regulations (if any), (3) cases from the Oklahoma Supreme Court and the Court of Civil Appeals, (4) opinions from the Oklahoma Attorney General (if any), and (5) Oklahoma Title Examination Standards adopted (or proposed) during that period.

II. STATUTORY CHANGES

(see: www.lsb.state.ok.us)

(PREPARED BY JASON SOPER)

55TH LEGISLATURE
(2015-2016 LEGISLATIVE TERM)
PENDING BILLS AND LAWS THAT MAY AFFECT
REAL PROPERTY & TITLE EXAMINATION STANDARDS
AMENDED & UPDATED FOR MAY, 2015 MEETING

LEGISLATIVE DEADLINES:

March 12 – Deadline for Third Reading of Bills and Joint Resolutions in Chamber of Origin

April 23 – Deadline for Third Reading of Bills and Joint Resolutions from Opposite Chamber

NLT*May 29 – Sine Die Adjournment

NLT* = No Later Than

ALL HOUSE BILLS INTRODUCED IN THE 2015-2016 SESSION

BILLS SENT TO THE GOVERNOR

HB1120 **EFFECTIVE NOVEMBER 1, 2015**
Title Insurance: Amends Okla. Stat. tit. 46 § 15.
Sponsor: Representative Russ and Senator Newberry

Status: House Committee substitute passed the Banking and Financial Services Committee by a 6-0 vote on 2/16/2015. Passed the Full House 94-0 with 7 excused on March 3, 2015. Engrossed to Senate. Passed Senate 44-0. **Signed into law by Governor 4/27/2015.**

Measure would amend and replace existing law to allow title insurance company or duly appointed agent to seek recovery on behalf of mortgagor for failure of mortgagee to release mortgage after 50 days; subject to exceptions and/or conditions.

HB1122 **EFFECTIVE NOVEMBER 1, 2015**
Recording and Filing of Documents: Amends Okla. Stat. tit. 19 § 298.
Sponsor: Representative Russ and Senator Newberry

Status: Passed the County and Municipal Government Committee by a 6-0 vote on 2/10/2015. Passed the Full House 91-7 with 3 excused on March 3, 2015. Engrossed to Senate. Passed Senate 44-0. **Signed into law by Governor on 4/27/2015.**

Measure would amend the law to require county clerks to accept and record documents with stray marks or parts of signatures in the margins of documents, so long as there is sufficient room for stamps and recording information, with certain conditions.

HB1123 **EFFECTIVE NOVEMBER 1, 2015**
Release of Mortgages: Amends Okla. Stat. tit. 46 § 15.
Sponsor: Representative Russ and Senator Newberry

Status: Passed the Banking and Financial Services Committee by a 6-0 vote on 2/10/2015. Passed the Full House 92-0 with 9 excused on March 3, 2015. Engrossed to Senate. Passed Senate 44-0. **Signed into law by Governor on 4/27/2015.**

Measure would amend law to decrease the allowed time period for the filing of a release of mortgage from 50 days to 30 days

HB2165? **Condemnations: Amends Okla. Stat. tit. 27 § 11 and 1203**
Sponsor: Representative McCullough and Sen. Sykes

Status: Referred to Judiciary and Civil Procedure Committee. Passed House 60-31; referred to Senate Judiciary Committee. Senate passed this bill with amendments. House rejected the Senate Amendments and requested a conference. Conference request and rejection of Senate Amendments rescinded by the House. Not sure what that means about the future of this one.

Measure would amend law to shift court costs including attorney's fee in certain situations.

~~**HB1149**~~ **Will and Prenuptial Challenges, "An Act to Preserve Testamentary and Marital Intent": New law to be codified as Okla. Stat. tit. 84 § 32**
Sponsor: Representative Grau and Sen. Sykes

Status: Referred to Judiciary and Civil Procedure Committee. Passed House 91-0 and referred to the Senate Judiciary Committee. Passed the Senate 46-0. **Vetoed by the Governor 4/21/2015.**

Measure would place the burden of proof, by clear and convincing evidence on any party seeking to challenge or invalidate a will or prenuptial agreement of any decedent or person subsequently adjudged incompetent and prevent the burden of proof from shifting to the opposing party, with certain conditions.

ALL OTHER HOUSE BILLS

~~**HB1031**~~ **Wills and Succession: New law to be codified as Okla. Stat. tit. 84 § 233.**
Sponsors: Representative David Perryman and Senator Pittman

Status: Never voted on in committee.

Measure would prevent any person convicted of abuse, neglect, or exploitation by a caretaker, verbal abuse by a caretaker, or exploitation of an elderly person or disabled adult or other listed crimes from inheriting from the victim, or receive any interest in the estate of the victim, or take by devise or legacy, or as a designated beneficiary of an account with POD or TOD designation, or as a surviving joint tenant, or by descent or distribution, from the victim, any portion of the victim's estate, with certain exceptions and/or conditions.

~~**HB 1039**~~ **Corporations: New law to be codified as Okla. Stat. tit. 18 § 1201.**
Sponsor: Representative Loring

Status: Measure passed the House Economic Development, Commerce and Real Estate Committee on February 12, 2015 and is awaiting consideration by the House. Did not make it out of committee.

Measure would establish a new law known as the Oklahoma Benefit Corporation Act to create business entities whose purpose is to pursue or create general or specific public benefits (such as environmental protection or social welfare programs).

~~**HB1119**~~ **Title Insurance: New law to be codified as Okla. Stat. tit. 36 § 5008.**
Sponsor: Representative Russ and Senator Newberry

Status: Passed the Economic Development, Commerce, and Real Estate Committee by an 8-0 vote on 2/11/2015. Passed the Full House 92-0 with 9 excused on March 3, 2015. Engrossed to Senate. **House Bill abandoned in Senate. See identical SB443 which was signed by Governor.**

Measure would create new law that allows a title insurance officer to file certain documents on behalf of a mortgagor, subject to exceptions and/or conditions.

~~**HB 1301**~~ Nonprofit entities: New law creating the Corporations and Limited Liability Companies Act.
Sponsor: Representative Wesselhoft.

Status: Measure has been referred to the House Rules Committee for consideration on February 3, 2015. Did Not Make it out of Committee

The measure is currently a shell-bill, void of any legislation. The bill will be monitored for amendments.

~~**HB 1363**~~ Courts: Jurisdiction of Special Judges Amending Okla. Stat. tit. 20 § 123.
Sponsor: Representative Griffith.

Status: Measure has been referred to the House Judiciary and Civil Procedure Committee for consideration on February 3, 2015. Did not make it out of committee.

The measure would amend Okla. Stat. tit. 20 § 123 to increase the jurisdiction of special judges from the current amount in controversy of $10,000.00 to $250,000.00.

~~HB1349~~ **Wills and Succession: New law to be codified as Okla. Stat. tit. 84 § 233.**
Sponsors: Representative Rousselot and Senator Patrick Anderson

Status: Passed the Judiciary and Civil Procedure Committee by a vote of 9-0 on 2/3/2015. No vote in full house.

Measure would prevent any person convicted of exploitation of an elderly person or disabled adult as defined by Section 843.4 of Title 21 from inheriting from the victim, or receiving any interest in the estate of the victim, or as a designated beneficiary of an account with POD or TOD designation, or as a surviving joint tenant, or by descent or distribution, from the victim, any portion of the victim's estate, with certain exceptions and/or conditions.

~~HB1352~~ **Nuisances: Amends Okla. Stat. tit. 20 § 20.**
Sponsor: Representative Rousselot

Status: Referred to County and Municipal Government Committee. Did not make it out of committee.

Measure would remove requirement in current law for a county to have population in excess of 50,000 before board of county commissioners can declare what constitutes a nuisance or provide for prevention, removal and/or abatement of said nuisances.

~~HB1449~~ **Landlord/Tenant: Amends Okla. Stat. tit. 12 § 1148.5A.**
Sponsor: Representative Calvey and Sen. Fry

Status: Passed to Economic Development, Commerce and Real Estate Committee by 9-0 vote on February 11, 2015. Passed House 62-28 and referred to senate Judiciary Committee. Passed Senate Judiciary Committee. Not voted on in Senate.

Measure would amend service of summons and posting requirements in actions adjudicating the right to restitution of the premises.

~~HB1519~~ **Property Owner Addresses: New law to be codified as Okla. Stat. tit. 19 § 298.2.**
Sponsor: Representative Loring And Senator Wyrick

Status: Referred to the County and Municipal Government Committee. Passed the Full House 87-1 with 13 excused on March 4, 2015. Engrossed to Senate. Not brought up for vote in Senate Committee.

Measure would create law requiring any owner of interest in real property to file a change of address form with the county assessor's office if the owner's mailing address changes.

~~**HB 1582**~~ **Public Lands: Amending Okla. Stat. tit. 64 § 1023.**
Sponsor: Representative Park.

Status: Measure has been referred to the House Common Education Committee for consideration on February 3, 2015. Did not make it out of committee

The measure would amend Okla. Stat. tit. 64 § 1023 to institute an automatic right of first refusal for the benefit of the current Lessee of public lands to renew a commercial or agricultural lease without following the public bidding requirements.

~~**HB1666**~~ **The "Neglected or Abandoned Residential Property Nuisance Abatement Act": New law to be codified as Okla. Stat. tit. 50 § 101.**
Sponsor: Representative Dank

Status: Referred to County and Municipal Government Committee. Passed Committee. Not voted on by full house.

Measure would allow any person to file a civil action for the recovery of damages caused by the failure or neglect of the owner of a single or multi-family dwelling structure that has become a nuisance, as authorized by this act according to certain conditions.

~~**HB1694**~~ **Liens: Amends Okla. Stat. tit. 42 § 91 and 91A.**
Sponsor: Representative Denney

Status: Referred to Rules Committee. Did not make it out of committee.

Measure would amend certain timing and notice requirements for liens on personal property.

~~**HB1961**~~ **Owners of land bordering roads and bridges: Amends Okla. Stat. tit. 69 § 1202.**
Sponsor: Representative Watson

Status: Referred to Rules Committee. Did not make it out of committee.

Measure would amend the existing law to clarify language.

~~**HB2102**~~ **"Oklahoma Community Protection Act": New law to be codified as Okla. Stat. tit. 60 § 100.**

Sponsor: Representative Moore

Status: Referred to Rules Committee. Did not make it out of committee.

Measure would create a law to prevent any political subdivision from infringing on private property rights.

~~**HB2199**~~ **Attorneys and Bar Dues: New law to be codified as Okla. Stat. tit. 5 § 12.1.**
Sponsor: Representative Calvey

Status: Referred to Judiciary and Civil Procedure Committee. Did not make it out of committee.

Measure would make payment of dues to the Oklahoma Bar Association optional and not a requirement for the practice of law.

~~**HB2152**~~ **Power of Alienation: Amends Okla. Stat. tit. 60 § 31 and 32.**
Sponsor: Representative Echols and Sen. Sykes

Status: Passed the Judiciary and Civil Procedure Committee by an 8 to 1 vote. Committee substitute presented 2/11/2015. Passed House 93-0 and referred to Senate Judiciary Committee. Passed out of Committee, but not brought up for a vote in the Senate.

Measure would amend current law to specify that certain provisions only apply to property not held in trust, and would amend current law so that the rule against perpetuities shall not apply to an Oklahoma trust, subject to certain conditions and/or exceptions.

~~**HB 2231**~~ **Liens: New law creating the Oklahoma Construction Registry Act.**
Sponsor: Representative Echols.

Status: Measure has been referred to the House Economic Development and Financial Services Committee on February 11, 2015. Engrossed to Senate. Not voted on in Senate Committee.

The measure allows for the creation of the Oklahoma construction Registry and the owner or project general contractor may choose to use the Construction Registry. Once a project is registered, all project providers shall register, and any provider who does not register shall forfeit all rights to file a lien or collect on a bond. The owner or general contractor may register the project within ten (10) business days after the contract signing date or the start of construction, whichever occurs first. Any project that is not registered within the prescribed time shall not be afforded the benefits of the Oklahoma Construction Registry Act and shall be subject to the current lien laws of the state. Registration by any

provider using the Construction Registry shall preserve the lien rights of that provider for activity up to sixty (60) days prior to the date of registration through the completion date of the project. Registration by provider eliminates the pre-lien notice requirement in Section 142.6 of Title 42 of the Oklahoma Statutes.

PLACE HOLDERS

~~**HB 1924**~~ **Property: New law creating the Oklahoma Property Act of 2015.**
Sponsor: Representative Jordan.

Status: Measure has been referred to the House Rules Committee for consideration on February 3, 2015. Did not make it out of committee.

The measure is currently a shell-bill, void of any legislation. The bill will be monitored for amendments.

~~**HB2077**~~ **"Oklahoma Property Tax Reform Act": New law not providing for codification.**
Sponsor: Representative Sean Roberts

Status: Referred to Rules Committee. Did not make it out of committee. Measure is a placeholder for the Oklahoma Property Tax reform Act of 2015.

~~**HB2089**~~ **"Guardian and Ward Act of 2015": New law not providing for codification.**
Sponsor: Representative Morrissette

Status: Referred to Rules Committee. Did not make it out of committee. Measure is a placeholder for the Guardian and Ward Act of 2015.

~~**HB2103**~~ **"Private Property Rights Act": New law not providing for codification.**

Sponsor: Representative Moore.

Status: Referred to Rules Committee. Did not make it out of committee. Measure is a placeholder for the Oklahoma Property Rights Act of 2015.

~~**HB2108**~~ **"Lien Act": New law not providing for codification.**

Sponsor: Representative Moore

Status: Referred to Rules Committee. Did not make it out of committee. Measure is a placeholder for the Lien Act of 2015.

~~**HB2173**~~ **"Oklahoma Receivership Act": New law not providing for codification.**
Sponsor: Representative McCullough

Status: Referred to Rules Committee. Did not make it out of committee. Measure is a placeholder for the Oklahoma Receivership Act of 2015.

~~**HB2220**~~ **"Surrogacy and Adoption Act": New law not providing for codification.**

Sponsor: Representative Grau

Status: Referred to Rules Committee. Did not make it out of committee. Measure is a placeholder for the Surrogacy and Adoption Act of 2015.

~~**HB2229**~~ **Ad Valorem Taxes: Amends Okla. Stat. tit. 68 § 3102 and 3103.**

Sponsor: Representative Grau

Status: Referred to Rules Committee. Did not make it out of committee.

Measure amends statute so that liens for failure to pay personal property taxes are perfected upon their placement on the personal property tax lien docket.

ALL SENATE BILLS INTRODUCED IN THE 2015-2016 SESSION

BILLS SENT TO THE GOVERNOR

SB109 **EFFECTIVE NOVEMBER 1, 2015**
Durable Powers of Attorney: Amends Okla. Stat. tit. 58 §§ 1074, 1075
Sponsors: Senator Anderson and Representative Rousselot

Status: Received Do Pass by Judiciary Committee. Passed Senate 44-0. Referred to House Judiciary and Civil Procedure Committee. Passed House 92-2. **Signed into law by Governor on 4/2/2015.**

Measure allows an attorney-in-fact to remain in place subsequent to a court appointing a fiduciary for the principal and further provides that said attorney-in-fact is then accountable to the fiduciary and principal and that the fiduciary has the same power to revoke or amend the Power of Attorney.
Measure also provides that one may rely on a recorded authority of an attorney-in-fact until the revocation of such durable power of attorney is recorded.

SB443 **EFFECTIVE NOVEMBER 1, 2015**
Title insurance: New law to be codified as Okla. Stat. tit. 36 § 500
same as HB1119 **authorizing a title insurance company to execute and record certain records.**
Sponsor: Senator Newberry and Representative Russ

Status: Referred to Senate Judiciary Committee on February 3, 2015. Passed Senate 42-0. Referred to House Insurance Committee. **Signed by Governor 5/1/2015.**

Measure would establish a new law authorizing a title insurance company to execute and record certain records in certain circumstances such as providing that certain affidavits will operate as a release for mortgages if the mortgagee fails to record a release within 60 days of receiving the payoff. The law also instructs the county clerk on the manner to index said title insurance company affidavits.

SB704 **EFFECTIVE NOVEMBER 1, 2015**
Oklahoma Health Care Authority; Permitting Authority to file liens for certain purposes. Amends 63 O.S. § 5051.3
Sponsors: Griffin and Cox

Status: Passed Senate 45-0. Passed House 85-2 with Amendments. House Amendments Passed by Senate 41-0. **Signed into law by the Governor on 5/6/2015**

Measure amends current law related to certain medical liens against the homestead, providing that in instances where an irrevocable trust is set up for the benefit of the recipient, the authority is included as the remainder.

SB725 **EFFECTIVE NOVEMBER 1, 2015**
Wills and Succession, offenses preventing a person from inheriting. Amends 84 O.S. § 231
Sponsors: Sen. Schulz and Rep. Wright

Status: Passed Senate 44-0; referred to House Judiciary and Civil Procedure Committee. Passed House 87-0. **Signed into law by Governor 4/7/2015.**

Measure would amend current "slayer statute" to add that persons convicted of certain crimes including abuse, neglect or exploitation of a vulnerable adult may not inherit from the victim of the offense.

SB745 **EFFECTIVE FROM DATE OF SIGNING – APRIL 20, 2015**
Transfer-on-death deeds; clarifying application of certain recording requirement. Emergency.
Sponsor: Senator Sykes and Rep. Johnson

Status: Measure has passed the Senate 45-0 and has been referred to the House Judiciary and Civil Procedure committee. Passed House 94-0. **Signed into law by Governor 4/20/2015.**

Measure amends Okla. Stat. tit. 58 § 1252. It amends the language requiring the documents be filed within nine months of the grantor's death. If the record owner's death was before November 1, 2011 the recoding of affidavit and related documents by the beneficiary are not subject to the nine-month time limit.

SB 774 **EFFECTIVE NOVEMBER 1, 2015**
Property: Amending Okla. Stat. tit. 60 § 175.47

Sponsor: Senator Sykes and Rep. Echols

Status: Measure has passed Senate 42-0 and been engrossed in the House. Passed House 82-0. **Signed into Law by Governor 4/21/2015.**

The measure would limit the application/effect of the rule against perpetuities for property expressly placed in a properly formed trust. Under the measure, the absolute power of alienation would not be suspended if there is any person in being who, alone or in combination with one or more others, has the power to sell, exchange, or otherwise convey the real or personal property of a trust. The measure also expressly provides that the common law rule against perpetuities shall not apply to a trust subject to the trust laws of Oklahoma. ***See also HB 2152***

~~**SB563**~~ **Use of roads, highways and rights-of-way; authorizing use of state and county roads for certain purposes. New law to be codified as 69 O.S. § 1450**
Sponsor: Senator Crain and Rep. Derby

Status: Passed Senate 31-13. Referred to House Transportation Committee. Passed House 84-13 with Amendments. Senate approved House Amendments 29-15. **Vetoed by the Governor**. Veto Message available on Secretary of State's website.

Measure provides for authorized parties to use public road and highway rights-of-way and easements for purposes including but not limited to constructing fences and laying pipeline, with certain conditions and exceptions.

ALL OTHER BILLS

~~**SB16**~~ **Ownership of Impounded Water: New law to be codified as Okla. Stat. tit. 60 § 60.1 and 82 § 105.2A**
Sponsors: Senator Fields and Representative Enns

Status: Referred to Energy Committee Feb. 3, 2015; No vote in committee.

Measure provides that any impounded water originating from any natural source shall be considered the private property right of the landowner and not subject to eminent domain, provided such impoundment does not impair the water rights or property of an adjacent landowner.

~~**SB17**~~ **Ownership of Stream Water: New law to be codified as Okla. Stat. tit. 60 § 60.1 and 82 § 105.2A**
Sponsors: Senator Fields and Representative Enns

Status: Referred to Energy Committee February 3, 2015. No vote in Senate Com.

Measure provides that water originating from a natural spring, when the natural spring's point of origin is located on the property of the landowner, shall be considered the private property right of the landowner and shall not be subject to public appropriation nor subject to laws of eminent domain.

~~**SB51**~~ **Statutes of limitation: Amends Okla. Stat. tit. 12 § 95**
Sponsor: Senator Anderson

Status: Received Do Pass by Judiciary Committee; Title Stricken.

Measure would add provision than an action challenging the constitutionality of an act of the Legislature pursuant to Section 57 of Article V of the Oklahoma Constitution shall be commenced within one (1) year of the effective date of the act

~~**SB57**~~ **Renewal of Guardianship Letters: Amends Okla. Stat. tit. 30 §§1-123, 4-307**
Sponsors: Senator Anderson and Representative Williams

Status: Received Do Pass by Judiciary Committee. Passed Senate 45-0. Referred to House Judiciary and Civil Procedure Committee. Was not brought up for a vote in House Committee.

Measure would place time limitation of fifteen (15) months on validity of guardianship letters unless such were renewed by the court pursuant to Section 4-307.

~~**SB69**~~ **Fees - County Clerks: Amends Okla. Stat. tit. 19 § 245**
Sponsor: Senator Standridge

Status: Referred to General Government Committee on February 3, 2015. Did not make it out of committee.

Measure would remove authorization to charge a fee for certain records in electronic format.
(This one may not be pushed because of some objectionable language.)

~~**SB99**~~ **Fees – Civil Cases: Amends Okla. Stat. tit. 28 § 152**
Sponsor: Senator Sharp

Status: Referred to Appr/Sub-Public Safety and Judiciary Committee on February 3, 2015. Did not make it out of committee.

Measure relates to flat fee schedule and provides for additional amounts to be collected and assessed to various funds.

~~**SB163**~~ **Offers of Judgment: Amends Okla. Stat. tit. 12 § 1101**
Sponsors: Senator Loveless and Representative McCullough

Status: Referred to Judiciary Committee. Did not make it out of committee.

Measure expands application of offers of judgment to all civil actions involving more than $100,000.00 with certain exceptions and conditions.

~~**SB202**~~ **County Clerks - Electronic Recording Fees: Amends Okla. Stat. tit. 19 § 245 and 28 § 32**
Sponsor: Senator Standridge

Status: Referred to General Government Committee. Did not make it out of committee.

See SB 69 - Measure would remove authorization to charge a fee for certain records in electronic format. (This one may not be pushed because of some objectionable language.)

Measure would also amend 28 O.S. § 32 to provide authority for county clerks to charge flat fee for providing electronic images.

~~**SB213**~~ **County Clerks - Electronic Recording Fees: Amends Okla. Stat. tit. 19 § 245**
Sponsor: Senator Bice; Representative Kannady

Status: Referred to General Government Committee. Passed Senate 44-0. Emergency Clause Stricken. Referred to House Government Oversight and Accountability Committee. Not brought to a vote in committee.

Measure authorizes county clerks to obtain, use and disseminate other digital images for commercial purposes but retains the restraint from providing all or part of a tract index for use in any commercial purpose. If the clerk possesses or maintains records in an electronic format, the clerk shall make the records available to the public and may charge the statutory "reasonable fee".

~~**SB226**~~ **Property Assessments: Amending Okla. Stat. tit. 60 § 523**
Sponsor: Senator Fry

Status: Referred to Judiciary Committee. Did not make it out of committee.

Measure amends existing law stating that drainage common elements that are established as easements or storm water retention/detention common areas in a unit ownership estate that are not maintained and become a nuisance may be the subject of a lawsuit by an interested party or entity for injunctive relief. If said party prevails the municipality or governmental entity will remedy the nuisance and that the costs of the action and remediation will be levied against the unit owners of the ownership estate.

~~**SB277**~~ **Citizens Land Banks Development Act**

~~**SB367**~~ **Business Entities: Modifying Provisions Related to Corporations and Limited Liability Companies.**
Sponsor: Senator Jolley

Status: Measure has been referred to Senate Judiciary Committee on February 3, 2015. Did not make it out of committee.

Measure contains 315 pages of proposed amendments to the state's current laws governing business entities. Although there are numerous proposed amendments, some of the more interesting is allowing Series LLCs to hold title to property separate from their "Parent" limited liability company; and modifies procedure for service of process on the Secretary of State and sets new requirements for operating a "non-stock corporation."

~~**SB449**~~ **Adult guardianship and protective proceedings; requiring notice to certain persons. Amends 30 O.S. § 3-110**
Sponsors: Senator Brooks and Rep. Johnson

Status: Passed Senate 39-0; Referred to House Judiciary and Civil Procedure Committee. Not brought to a vote in House Committee.

Measure would amend law to add nieces and nephews of the proposed ward into the line of people to receive notice in certain circumstances.

~~**SB458**~~ **Landlord and tenant; construing provisions related to termination of tenancy.**
Sponsor: Senator Floyd

Status: Referred to Senate Judiciary Committee on February 3, 2015. Did not make it out of committee.

Measure would allow the termination of month-to-month tenancy or tenancy at will with at least thirty (30) days written notice and the thirty-day period runs from the date notice to terminate is served. If the tenancy is less than month-to-month it may be terminated with seven days' notice and a tenancy for a definite term expires on the ending date with no notice. If the tenant remains in possession after any of these termination dates the landlord may immediately bring an action for possession and damages. The landlord may collect not more than twice the average monthly rental computed and prorated on a daily basis. If the landlord consents to the continued occupancy a month-to-month tenancy is created.

~~**SB619**~~ **Limited liability companies; specifying persons authorized to sign annual certificate.**
Sponsor: Senator Sparks

Status: Referred to Senate Judiciary Committee on February 3, 2015. Did not make it out of committee.

This measure requires every domestic limited liability company and every foreign limited liability company registered to do business in the state to file a certificate with the Office of the Secretary of the State which confirms it is an active business and pay a twenty-five dollar fee. This certificate must be signed by a member, manager or representative of the entity authorized to sign on its behalf. This certificate is due on the anniversary date of the filing of the articles of organization and the Secretary of the State will send a notice about this certificate sixty days before it is due. If this is not filed the company will no longer be in good standing and if the company is not in good standing then they may not maintain any action, suit or proceeding in any court of the state until they are reinstated. A company can be reinstated by filing all delinquent annual certificates and filing an application or reinstatement with the Secretary of State.

~~**SB729**~~ **Corporations; creating the Oklahoma Religious-Based Entity Act.**
Sponsor: Senator Shortey

Status: Referred to Senate Judiciary Committee on February 4, 2015. Did not make it out of committee.

Measure would establish a new law that would assure that adoption of an entity form for the conduct of business for profit does not curtail the right to the free exercise of assembly, association, speech or religion by the owners it also may not endorse any particular religion or establish any religion and provides a specific framework for entities operated for profit to pursue religious-based purposes. In order to be a religious based entity an organization must: state at least one religious based purpose in its formations instrument, shall be closely held, a domestic corporation, domestic limited partnership or domestic limited liability company and the formation instrument includes statements that the entity elects to be subject to this act, the entity will satisfy the requirements of this act and eighty percent of the owners have approved the religious-based purpose.

If you know of any other matters that you believe should be added to this report, please contact or Ryan Schaller at (405) 552-7747 - rschaller@firstam.com.

Note: Bill numbers that are underlined are bills monitored by the OLTA's legislative liaison Clayton Taylor.

III. REGULATORY CHANGES

(NONE)

IV. CASE LAW

A. OKLAHOMA SUPREME COURT CASES

LIST OF CASES

NO.	TOPIC	CASE	OKLAHOMA CITATION	DECIDED	MANDATE
A. OKLAHOMA SUPREME COURT CASES					
1	Documentary Stamp Tax on Sheriff's Deed	Murray County v. Homesales, Inc.	2014 OK 52	5/8/2014	8/1/2014
2	Condemnation Valuation of Billboard	State ex rel. Dept. of Transportation v. Lamar Advertising of Oklahoma, Inc.	2014 OK 47	6/3/2014	10/15/2014
3	Ad Valorem Taxation, and Private Attorneys Representing Assessors	Yazel v. William K. Warren Medical Research Center	2014 OK 57	6/24/2014	?
4	Ad Valorem Taxation, and Private Attorneys Representing Assessors	Yazel v. William K. Warren Medical Research Center	2014 OK 58	6/24/2014	?
5	Bondholders are Necessary Parties to Suit Re: Public Expenditures	Tulsa Industrial Authority v. City of Tulsa	2014 OK 81	9/30/2014	10/27/2014
6	Documentary Stamp Tax on Sheriff's Deed; Class Certification	Marshall County v. Homesales, Inc.	2014 OK 88	10/28/2014	12/1/2014
7	Notice of Annexation by Certified Mail	In Re: Detachment of Municipal Territory From the City of Ada	2015 OK 18	4/20/2015	8/3/2015
8	Waiver of Appeal Right	Hamm v. Hamm	2015 OK 27	4/28/2015	6/10/2015

9	Notice of Extrinsic Document	Walker v. Builddirect.com Technologies Inc.	2015 OK 30	5/5/2015	5/29/2015
10	Divorce Decree Judgment Lien Foreclosure; Reversionary Clause Enforcement	Benefiel v. Boulton	2015 OK 32	5/12/2015	6/10/2015
11	Advalorem Tax Sale Notice	Crownover v. Keel	2015 OK 35	5/26/2015	10/9/2015
12	Finality of Divorce Decree	Alexander v. Alexander	2015 OK 52	6/30/2015	10/9/2015
13	Jurisdiction of District Courts Over Oil & Gas Torts	Ladra v. New Dominion, LLC	2015 OK 53	6/30/2015	8/3/2015
14	Increasing Real Property Assessment (5% Cap)	Frankenburg v. Strickland	2015 OK 23	4/21/2015	5/20/2015

A. OKLAHOMA SUPREME COURT

1. **MURRAY COUNTY v. HOMESALES (2014 OK 52)**

TOPIC: DOCUMENTARY STAMP TAX ON SHERIFF'S DEED

RULING: Only OTC can enforce collection of unpaid documentary stamp tax, but counties have standing to sue to determine tax liability.

FACTS: Mortgage lender was the highest bidder at 4 of its own foreclosure sales, but verbally assigned the right to the sheriff's deed at the confirmation hearing to an affiliated entity. The trial court directed the sheriff to show the assignee as the grantee on the deeds, and the sheriff did so. The lender claimed such deeds were exempt from payment of the documentary stamp tax (68 O.S. §§3201 to 3206) and did not pay such taxes. In particular the lender relied on 68 O.S.§3202(13), which exempts the lender, when the lender takes a sheriff's deed at its own foreclosure sale, IF it is the grantee. The county assessors of Murray and Johnston Counties sued the lender to collect the tax on the deeds.

TRIAL COURT RULING: The trial court granted partial summary judgment to the 2 counties determining: (1) the conveyances were not exempt from such tax, and (2) the counties could sue to enforce and collect such tax. The trial court certified the judgment for immediate appeal.

SUPREME COURT RULING: The Supreme Court granted Certiorari to ensure there was a uniform approach to enforcement of such taxes in every county. The Supreme Court affirmed in part, reversed in part, and remanded. It affirmed the counties' standing to challenge the claim of exemptions, but reversed and held they could not enforce the tax obligation. This reversal was because such enforcement power is statutorily given exclusively to the Oklahoma Tax Commission (or the State Attorney General), but not to the counties. Both the counties and the

OTC receive a portion of such tax revenues. It further held the transfer of real property between affiliated entities is not taxable, IF the consideration paid does not exceed $100.00 [this threshold amount is set forth in 68 O.S.§3201(A)]. It also held the counties had failed to establish whether the consideration for the conveyance exceeded the threshold amount in order to constitute a taxable "sale". Consequently, it remanded the proceeding to the trial court for a proceeding considering such consideration issue. The dissent held there could be no standing to achieve a declaratory ruling on the tax exemption issue without the ability to receive relief to enforce the collection of taxes.

[Editor's Note: The $100.00 statutory threshold amount of consideration is not limited to conveyance to "affiliated" entities. (68 O.S. §3201(A)). Also, the lender did not raise the consideration issue, but the Supreme Court did. (Sua Sponte?)]

2. **STATE EX REL. DEPT. OF TRANSPORTATION v. LAMAR ADVERTISING OF OKLAHOMA, INC. (2014 OK 47)**

TOPIC: CONDEMNATION VALUATION OF BILLBOARD

RULING: Income from billboard can be included in condemnation valuation.

FACTS: ODOT condemned lands for a highway, and also required the removal of an existing billboard on the site. ODOT valued the billboard based on costs to reproduce, which was $60,000, while the owner of the sign, Lamar, valued it at $429,000. The three court-appointed Commissioners determined a valuation of $212,500.

TRIAL COURT RULING: ODOT demanded a jury trial. The jury awarded $206,000. ODOT wanted the billboard to be classified as personal property, and for the valuation to be limited to the depreciated reproduction costs of the sign, or to the cost to relocate the sign ($60,000). Lamar argued the sign, the leasehold it sat on, and the related business income--together--made the sign worth $429,000. The trial court ruled (1) that the sign was real property, (2) that there was not a possible relocation site, and (3) that the rental income was a proper component of the valuation. The trial court also held that it was proper for the burden of proof to shift to the billboard owner--after ODOT proved the validity of the taking -- even though ODOT demanded the jury trial. Both sides appealed.

SUPREME COURT RULING: The Oklahoma Supreme Court retained the case. The trial court decision was affirmed. The Supreme Court ruled that the billboard was a fixture and was real property, but that such classification was not relevant because the income from the billboard was a proper part of the valuation process. The court also held that once ODOT established the need to condemn the property, the burden of proof as to valuation properly shifted to the property owner.

3. **YAZEL v. WILLIAM K. WARREN MEDICAL RESEARCH CENTER (2014 OK 57)**

TOPIC: AD VALOREM TAXATION, AND PRIVATE ATTORNEYS REPRESENTING ASSESSORS

RULING: County assessors can hire outside attorneys to represent them in proceedings before the County Board for Equalization and the Courts.

FACTS: Two non-profit entities had received tax exempt status for their large medical facilities for over ten years, due to their facilities status as a "continuum of care retirement community". The Tulsa County Assessor denied their exempt status and placed the properties on the tax rolls, at about $178 million and $1.6 million, respectively. The non-profit entities appealed to the County Board of Adjustment and the Board restored their tax exempt status. The county sued in District Court.

TRIAL COURT RULING: The trial court granted the tax payers' motions for summary judgment restoring the tax exempt status. The county assessor appealed.

COURT OF CIVIL APPEALS RULING: The court of civil appeals dismissed the case because the County Assessor was represented by an outside counsel hired to represent the assessor as its general counsel, instead of using the District Attorney or the State Attorney General. The assessor sought Certiorari, which was granted.

SUPREME COURT RULING: Amicus briefs were filed by the County Assessors Association of Oklahoma, and the County Officers and Deputies Association of Oklahoma, in support of the county assessor. The Supreme Court ruled that the statutes expressly allow the assessor to either ask for assistance from its district attorney or the state attorney general, or hire its own counsel

directly to advise it and to pursue legal action. The case was remanded to the court of civil appeals for consideration of the tax exemption issue.

4. **YAZEL v. WILLIAM K. WARREN MEDICAL RESEARCH CENTER (2014 OK 58)**

TOPIC: AD VALOREM TAXATION, AND PRIVATE ATTORNEYS REPRESENTING ASSESSORS

RULING: County assessors can hire outside attorneys to represent them in proceedings before the County Board of Equalization and the Court.

FACTS: [THIS IS A COMPANION CASE TO: **YAZEL v. WILLIAM K. WARREN MEDICAL RESEARCH CENTER (2014 OK 57)--SEE ABOVE]**

TRIAL COURT RULING:

COURT OF CIVIL APPEALS RULING:

SUPREME COURT RULING:

5. **TULSA INDUSTRIAL AUTHORITY v. CITY OF TULSA (2014 OK 81)**

TOPIC: BONDHOLDERS ARE NECESSARY PARTIES TO A SUIT RE: PUBLIC EXPENDITURES

RULING: Taxpayer's repeated refusal to join bondholders justified dismissal with prejudice.

FACTS: Taxpayer sought to intervene in a pending suit to assert that there had been illegal public expenditures and industrial bond financing (qui tam and equitable relief). This matter was appealed initially, and it was determined that, while a qui tam action would not be permitted, the taxpayer could seek equitable relief. The matter was remanded to the trial court to proceed.

TRIAL COURT RULING: In response to motions to dismiss, the trial court ordered the industrial bond holders to be given notice as necessary parties to avoid multiple or potentially inconsistent rulings in possible subsequent additional suits by the bondholders. The taxpayer was given multiple extensions of time to file an amended petition and was ordered to join the bondholders (not just give them notice), but he failed to join them. While the last deadline was pending, the taxpayer filed an Application for the Supreme Court to Assume Original Jurisdiction and filed a Petition for Writ of Prohibition and Mandamus asking the Supreme Court to become involved. Then, when the deadline passed to join the bondholders as necessary parties, the trial court dismissed the taxpayer's suit, with prejudice.

SUPREME COURT RULING: The Supreme Court retained jurisdiction. The appellate court held that it was proper for the trial court to require the joinder of the bondholders as necessary parties, to avoid multiple and potentially inconsistent rulings. The argument of the taxpayers that it did not have access to the names and contact information for the bondholders was rejected

because the taxpayer failed to show any attempt to request such information. The trial court's dismissal with prejudice was affirmed.

6. **MARSHALL COUNTY v. HOMESALES, INC. (2014 OK 88)**

TOPIC: DOCUMENTARY STAMP TAX ON SHERIFF'S DEED; CLASS CERTIFICATION

RULING: Only OTC can enforce collection of unpaid documentary stamp tax, but counties can sue to determine tax liability; absent proof of the minimum of $100.00 in consideration, class standing cannot be approved.

FACTS: Mortgage lender was the highest bidder at 238 of its own foreclosure sales (in 28 counties), but verbally assigned the right to the sheriff's deed at the confirmation hearing to an affiliated entity. The trial court directed the sheriff to show the assignee as the grantee on the deeds, and the sheriff did so. The lender claimed such deeds were exempt from payment of the documentary stamp tax (68 O.S. §§3201 to 3206) and did not pay such taxes. In particular the lender relied on 68 O.S.§3202(13), which exempts the lender at its own foreclosure sale, IF it is the grantee. The county sued to collect the tax, and sought to certify the case as a class action, for all 77 counties due to the lost revenue.

TRIAL COURT RULING: The trial court certified the class and also certified the case for immediate appeal. The lender appealed on two issues: (1) whether the county had standing, and (2) whether class certification was proper, and the Supreme Court retained the case.

SUPREME COURT RULING: The Supreme Court held the trial court's order refusing to dismiss the County's action because the County lacked standing was not a final order, and was not certified for immediate appeal and, therefore, its appeal was premature and was dismissed. However, following the holding in the recent decision in MURRAY COUNTY v. HOMESALES (2014 OK 52) (see above) the Supreme Court then held that the County did have standing to seek declaratory ruling and injunctive relief as to whether taxes were due, but could not pursue enforcement and collection activities. Only the Oklahoma Tax Commission or the Attorney General could do so.

However, in regard to class certification, the Supreme Court also held that since the County cannot seek to collect such taxes, it failed to establish one of the alternative class status requirement that it must be seeking monetary damages (12 O.S. § 2023(B) (3)). The class certification based on seeking monetary damages is reversed. The county could have established an alternative ground for class certification, if it could show it was likely the County would prevail on showing a common fact, being that all of the deeds were not exempt from taxation (12 O.S. § 2023(B) (2)). The proof offered by the County was 238 deeds filed by the lender, where the grantee was not the lender, but was an affiliated entity. Such proof failed to show whether the threshold amount of $100.00 in consideration was paid to the lender by the assignee/grantee for each of the deeds. Therefore, the trial court must consider this threshold issue before it can grant the class certification. The Supreme Court ruled that the County had standing to seek declaratory and injunctive relief, but only if the Court first established that the threshold amount of consideration was paid. The case was remanded to the trial court for a determination of the consideration question, and the common fact issue.

7. **IN RE: DETACHMENT OF MUNICIPAL TERRITORY FROM THE CITY OF ADA (2015 OK 18)**

TOPIC: NOTICE OF ANNEXATION BY CERTIFIED MAIL

RULING: Failure to use certified mail to give notice to interested persons meant the city did not have jurisdiction to annex lands.

FACTS: The City of Ada passed a city ordinance annexing certain lands into the city limits. The applicable statute called for notice to be given by certified mail to owners of property of 5 acres or more used for agricultural purposes, if they abutt the boundaries of the annexed territory. Regular U.S. mail is allowed to give notice to owners of the lands being annexed. Only regular first class U.S. mail was used to send notice of the new ordinance to such abutting owners. One such abutting landowner protested the validity of the ordinance due to lack of proper mailing procedures, but the City refused to withdraw the ordinance. The landowner filed a Petition for Declaratory Judgment and, in the alternative, for Detachment of Municipal Territory.

TRIAL COURT RULING: The trial court denied the landowner's request for relief, and upheld the annexation, but certified the Order for immediate appeal.

SUPREME COURT RULING: The Supreme Court retained the matter. The court held that substantial compliance with the statute--giving notice by regular rather than certified mail--was not acceptable. It ruled that by failing to give the notice by the statutorily prescribed procedure (certified mail) the city failed to acquire jurisdiction to pass the ordinance. The trial court's order was reversed and the case was remanded to the trial court for further proceedings to overturn the ordinance.

8. **HAMM v. HAMM (2015 OK 27)**

TOPIC: WAIVER OF APPEAL RIGHT

RULING: Wife's acceptance of transfer of real property and payment of property division alimony ($1billion) in satisfaction of a divorce decree judgment waives wife's right to continue her appeal of the division of marital assets. Husband's appeal of the same issue was allowed to continue.

FACTS: The parties went through a divorce.

TRIAL COURT RULING: The trial court awarded certain real property and certain personal property, to the wife, along with a judgment ($1 billion) for property division alimony, with such money to be paid over time. The husband immediately transferred the real and personal property (consistent with the court order) and also paid the money judgment almost immediately. The wife accepted the real property, other personal property, and cashed the $1 billion check.

SUPREME COURT RULING: Both parties appealed the trial court's decision. The Supreme Court retained the case. The husband moved to dismiss the wife's appeal as being waived because she accepted the benefits of the judgment. The Supreme Court dismissed the wife's appeal as being waived by her acceptance of the benefits of the judgment.

There were several concurring opinions and dissents. Such additional opinions and dissents focus on the recent developments in the law which modify the old rule that acceptance of a benefit of a judgment waives the right for approval. The new approach tries (1) to protect parties who accept such benefits due to desperate need to receive such benefits, or (2) to create equality by ending both parties' appeals, especially where the husband is attempting (through his counter appeal) to reduce the judgment against him, as being unfair, while saying his wife's appeal should be dismissed because the existing judgment, which he paid, was fair.

9. **WALKER v. BUILDDIRECT.COM TECHNOLOGIES INC. (2015 OK 30)**

TOPIC: NOTICE OF EXTRINSIC DOCUMENT

RULING: A buyer of home supplies (wood flooring) had no notice of the "Terms of Service" found on the vendor's website i.e., which required arbitration of any dispute. Such "Terms of Service" were only mentioned in passing on the contract without describing the topics of such Terms and without any guidance on how to locate such Terms.

FACTS: The buyer of $8 thousand worth of wooden flooring through the Chinese vendor's website installed the flooring and then discovered "nonindigenous wood-boring insects". The house was severely damaged by the insects and was quarantined for possible destruction by the US Department of Agriculture. The buyer sued in federal district court for damages. The contract between the seller and buyer expressly made the contract subject to "Terms of Service", but did not expressly indicate where to find the Terms and did not list the topics covered by the Terms. The Terms were located on the website of the seller initially under the button labeled "Customer Service", and then at the link labeled "Terms of Service'. Such Terms required arbitration in the event of any dispute, rather than litigation.

FEDERAL DISTRICT COURT RULING: The buyer sued in Federal District Court for damages. The seller moved to compel arbitration. The federal district court denied the seller's motion to compel arbitration. The seller appealed by statutory right to the Tenth Circuit since the issue regarded the obligation to arbitrate the dispute.

FEDERAL COURT OF APPEALS RULING: The Tenth Circuit certified the following question to the Oklahoma Supreme Court: "Does a written consumer contract for sale of goods incorporate by reference a separate document entitled 'Terms of Sales' available on the seller's website, when

the contract states that it is 'subject to' the seller's 'Terms of Sale' but does not specifically reference the website?"

SUPREME COURT RULING: "In response, this [Oklahoma Supreme] Court holds that a contract must make clear reference to the extrinsic document to be incorporated, describe it in such terms that its identity and location may be ascertained beyond doubt, and the parties to the agreement had knowledge of and assented to the incorporated provisions. Therefore, this Court answers the certified question in the negative." "For the reasons stated herein, Oklahoma law does not recognize a vague attempt at incorporation by reference as demonstrated in this action. Under the Oklahoma law of contracts, parties may incorporate by reference separate writings, or portions thereof, together into one agreement where (1) the underlying contract makes clear reference to the extrinsic document, (2) the identity and location of the extrinsic document may be ascertained beyond doubt, and (3) the parties to the agreement had knowledge of and assented to its incorporation."

[Author's comment: This case provides hints as to when documents that are referred to in recorded instruments (such as deeds or oil and gas leases) will be effectively incorporated into the first instrument.]

10. **BENEFIEL v. BOULTON (2015 OK 32)**

TOPIC: DIVORCE DECREE JUDGMENT LIEN FORECLOSURE; REVERSIONARY CLAUSE ENFORCEMENT

RULING: Divorce decree awarding judgment lien to enforce property settlement payments was a "perfected" lien on the land without recording, and gave "actual" notice of such lien (not "constructive" notice) by inclusion of the unrecorded decree in the buyer's abstract, which was overlooked by the title insurance company's title examiner.

FACTS: Divorce decree granted title to home to wife (and husband gave wife a quit claim deed), and the decree required wife to make periodic payments as the property settlement to husband. Total amount was $25,000: $10,000 initially and then 3 annual payments of $5,000. Decree gave husband a judicial lien on the house to secure such payments, as well as an automatic reversionary right whereby he would receive title if the wife missed a payment. The decree was not recorded in the land records. Wife made all but the last payment and sold the house to a third party. Buyer from wife had title insurance and the abstract included the unrecorded decree. The title examiner failed to reveal the judge-made lien to the title company. The husband sued the buyer to foreclose his judgment lien and to quiet title to the real property under the reversionary provision. Three years after the lawsuit was filed, the buyer (really the tile company) tendered the remaining amount due (without interest on it), and then, after judgment on the lien was granted to the husband (but before the Sheriff's sale), the buyer (really the title company) tendered the interest on the debt as well, thus redeeming the property from the lien.

TRIAL COURT RULING #1: The trial court's initial ruling was issued in favor of the husband on all issues: "(1) the divorce decree created a valid 'mortgage lien' against the property; (2) [wife] Christa Benefiel defaulted on the property division obligation; and (3) in accordance with the

divorce decree, Christa Benefiel's default resulted in the automatic reversion of title to Plaintiff [husband]." The buyer appealed.

COURT OF CIVIL APPEALS RULING #1: In a first appeal, in an unpublished opinion, the COCA partially affirmed the trial court by declaring: (1) the unrecorded decree was "properly perfected", (2) the third party buyer had "actual" notice of the unrecorded decree because it was in the abstract, (3) the buyer bought the residence subject to a valid pre-existing encumbrance, and (4) the judgment lien was "analogous to a real estate mortgage lien". But the COCA found that "the reversionary clause was void because it deprived Boulton [third party buyer] of the right to redeem the property." The case was remanded to the trial court.

TRIAL COURT RULING #2: After the buyer paid the remaining principal amount due ($5,000) -- really the title company -- the trial court granted partial summary judgment to the husband, allowing foreclosure of the lien. The trial court also held the buyer held a continuing right to redeem the property from the lien. The seller-really the title company--tendered the remaining interest due on the debt, but not the husband's attorney fees. The trial court entered a "Court Minute" adopting the husband's proposed JE, finding the buyer failed to satisfy the judgment because he failed to pay the attorney fees.

COURT OF CIVIL APPEALS RULING #2: It reversed the trial court and ruled that the buyer's payment of the principal amount alone ($5,000), without interest, redeemed the property. The trial court was directed to enter judgment for the buyer and to award the buyer attorney fees for successfully defending against the foreclosure action. The husband appealed.

SUPREME COURT RULING #2: The Supreme Court granted Certiorari. It vacated the COCA judgment, and reinstated the trial court judgment as modified. It held that payment of both

principal and interest was required to redeem the property, but not attorney fees. It also held that due to the buyer's delay in redeeming the property, the husband prevailed in the lien foreclosure, but the buyer won on the "reversionary" clause Quiet Title issue. The trial court was directed "to award attorney fees, if allowable, consistent with this opinion."

[Author's comment: (1) The Supreme Court opinion did not consider the underlying conclusions of the COCA that (a) the judge-made lien was property "perfected" without filing, or (b) the presence of the decree in the abstract somehow gave the buyer "actual" notice of the decree and its contents; (2) the Supreme Court only ruled on who was the prevailing property, for attorney fee purposes, and (3) the Supreme Court left the decision to the trial court as to whether any attorney fees were "allowable" to either party.]

11. **CROWNOVER v. KEEL (2015 OK 35)**

TOPIC: ADVALOREM TAX RB SALE NOTICE

RULING: After county's notice of impending tax resale was returned unclaimed ("not deliverable as addressed unable to forward"), the county's failure to make additional efforts to locate and give notice to the land owner fell short of the required constitutional due process requirements.

FACTS: Land owner moved from the taxed real property and failed to provide an updated mailing address to the county. The landowner failed to pay advalorem taxes for several years. The county sent certified (not return receipt requested) to the last mailing address of the landowner. The notice was returned with the notation, "not deliverable as addressed unable to forward". The county failed to take any further steps to locate the landowner, and relied upon publication notice to support its subsequent tax resale and issuance of a tax deed to a third party. The former landowner realized there had been a tax sale when the new owner contacted the former landowner (which the county claimed it could not do) and asked how to handle some personal property left on the land. The former landowner sued to extinguish the tax deed based on lack of due process notice.

TRIAL COURT RULING: The landowner argued that the address on the last check which was sent to the county to pay taxes had the correct current address and should have been used to contact him. The trial court denied the former landowner's motion for summary judgment on the inadequacy of notice issue, and granted the county's motion for summary judgment concluding that the notice was adequate, under the statute, which called for notice by certified mail and publication notice. The landowner, Crownover, appealed.

COURT OF CIVIL APPEALS RULING: The court of civil appeals affirmed the decision of the trial court. The COCA primarily simply relied upon the fact that the county complied with the

literal requirements of (1) mailing notice by certified mail, and (2) giving publication notice. It also relied upon the statute that provides that "failure to receive this notice did not invalidate the sale." The former landowner, Crownover, sought Certiorari.

SUPREME COURT RULING: The Oklahoma Supreme Court accepted Certiorari and vacated the COCA opinion and reversed the trial court. The Oklahoma Supreme Court gave a detailed history of the decisions by both the US Supreme Court and the Oklahoma Supreme Court regarding what constitutes adequate due process in an advalorem tax sale notice. It (1) emphasized that literal compliance with the state statutes was not sufficient, and (2) especially relied on one fairly recent U.S. Supreme Court case, *Jones v. Flowers*, 547 U.S. 220, 126 S.CT. 1708, 164 L.Ed.2d 415 (2006). In *Jones* the notice of a tax sale was deemed inadequate when it consisted solely of two attempts to mail notice by certified mail, plus publication notice. The Oklahoma Supreme Court quoted *Jones*, "when mailed notice of a tax sale is returned unclaimed, the State must take additional steps to attempt to provide notice to the property owner before selling his property, if it is practical to do so." The Oklahoma Supreme Court noted that "The *Jones* court also stated succinctly that the property owner's failure to keep his address updated, which was required by statue, did not result in the owner somehow forfeiting his right to constitutionally sufficient notice." The case was remanded to the trial court for further proceedings consistent with the opinion of the Oklahoma Supreme Court.

12. **ALEXANDER v. ALEXANDER (2015 OK 52)**

TOPIC: FINALITY OF DIVORCE DECREE

RULING: The issuance of a minute order dissolving a marriage is effective immediately to sever the relationship, even if other issues, such as property division, have not been resolved.

FACTS: Wife and husband were married for 40 years and accumulated millions of dollars of real property held by corporations in the wife's name. The wife filed for divorce on October 23, 2012. The wife announced she had stage 4 lung cancer and would die soon; she died on October 10, 2013. The wife desired to leave her part of the estate to her daughters.

TRIAL COURT RULING: The trial court issued a handwritten court minute on August 20, 2013, granting the wife's Motion for a Grant of Divorce. The judge, as well as both parties' attorneys, signed the minute order, and it was filed. The minute order directed the parties to participate in mediation within 5 days to resolve the remaining property issues and to submit a comprehensive journal entry to the judge in 10 days. Neither party presented such journal entry. The wife died two months later on October 10, 2013. Eight days later the husband filed a motion to dismiss the action, asserting that the death of the wife ended the court's jurisdiction. The wife's daughters objected. The trial court granted the husband's motion to dismiss.

COURT OF CIVIL APPEALS RULING: The COCA affirmed.

SUPREME COURT RULING: The Oklahoma Supreme Court accepted Certiorari. The court vacated the COCA decision and reversed the trial court. The court reasoned that divorce proceedings operate under certain separate statutes, which provide "the adjudication of any issue should be 'enforceable when pronounced by the court.'". Also, it was noted, "It is common for district courts to grant a divorce at one point in time but then reserve jurisdiction to address other pending issues--such as division of property or determinations as to custody or child support--to a

later date." The matter was remanded to the trial court to divide the property, and to take further actions.

13. **LADRA v. NEW DOMINION, LLC (2015 OK 53)**

TOPIC: JURISDICTION OF DISTRICT COURTS OVER OIL & GAS TORTS

RULING: District courts have jurisdiction over tort claims arising from oil and gas operations, so long as no effort to challenge or modify Oklahoma Corporation Commission orders is involved.

FACTS: Several oil operations companies disposed of saltwater underground around Prague, Oklahoma. During an earthquake in Prague a homeowner's home was shaken by an earthquake resulting in fireplace rocks falling and injuring the homeowner. She suffered personal injury and sued to recover damages, allegedly in excess of $75,000. She sued the saltwater disposal companies for these damages.

TRIAL COURT RULING: The companies moved to dismiss the action, asserting that only the Oklahoma Corporation Commission had jurisdiction to regulate oil and gas operations. The trail court granted the motion to dismiss.

SUPREME COURT RULING: On appeal the Oklahoma Supreme Court retained the case. The trial court's decision was reversed. The Supreme Court held that the OCC only held exclusive jurisdiction over regulatory matters, and not over torts. It stated, "Allowing district courts to have jurisdiction in these types of private matters does not exert inappropriate 'oversight and control' over the OCC, as argued by the Appellees. Rather, it conforms to the long-held rule that district courts have exclusive jurisdiction over private torts when regulated oil and gas operations are at issue." The case was remanded to the trial court for further proceedings.

14. FRANKENBURG v. STRICKLAND (2015 OK 23)

TOPIC: INCREASING REAL PROPERTY ASSESSMENT (5% CAP)

RULING: The county assessor can increase real property assessment by only 5% per year, except that in the year that improvements are **made** the full value of the improvements can be reflected in an increase in valuation only if a new **assessment** is also made in that same year.

FACTS: The house was constructed in 1990. The property was assessed in 1999 at about $70,000. After a fire damaged the house in 2000, the owners repaired the house and made improvements in 2001. No improvements were made thereafter. In 2011 (ten years later) the assessor made a new assessment and gave notice of a valuation of $219,284, and announced that the taxable value was also increased to that new amount ($219,284), despite the Constitutional cap of only allowing a 5% increase per year. The taxpayer protested both informally to the assessor and formally to the County Board of Equalization, without success, except that the valuation was lowered to $149,877. The taxpayer filed suit.

TRIAL COURT RULING: On cross motions for summary judgment, the trial court granted the taxpayer's motion, and denied the assessor's, ordering the assessor to limit the increase to a single 5% increase, increasing the taxable value to $73,076. The county appealed.

SUPREME COURT RULING: The Oklahoma Supreme Court retained the case, and affirmed the trial court. The Supreme Court held that the Constitutional provision was unambiguous, and that the lifting of the 5% cap could occur in the year of the making of improvements, but only if the new assessment occurs that same year. Otherwise, whenever the improvements are discovered the county can make only a 5% per year increase in that year and each future year. The assessor suffered a lost opportunity to increase the value beyond the 5% per year cap.

B. OKLAHOMA COURT OF CIVIL APPEALS CASES

(JULY 1, 2014-JUNE 30, 2015)

LIST OF CASES

NO.	TOPIC	CASE	OKLAHOMA CITATION	DECIDED	MANDATE
B. OKLAHOMA COURT OF CIVIL APPEALS					
1	Ad Valorem Tax Exemption Lost	Advancpierre Foods, Inc. v. Garfield County Bd. of Taxroll Corrections	2014 OK CIV APP 62	5/8/2014	6/11/2014
2	Ad Valorem Tax Reassessment After Payment	Inverness Vill. v. Enlow	2014 OK CIV APP 63	4/11/2014	7/2/2014
3	Dismissal With Prejudice Without Proof Of Notice	Wells Fargo Bank, N.A. v. Kindle	2014 OK CIV APP 67	6/11/2014	8/1/2014
4	Standing To Foreclose Mortgage	Onewest Bank, F.S.B. v. Jacobs	2014 OK CIV APP 72	7/25/2014	9/5/2014
5	Second Attack For Lack Of Standing	Mortgage Electronic Registration Systems, Inc. v. Wilson	2014 OK CIV APP 74	8/20/2014	9/23/2014
6	Nunc Pro Tunc Order Can Change Substance	Brady v. Brady	2014 OK CIV APP 76	8/29/2014	9/23/2014
7	Mortgage Foreclosure And Adverse Possession	Bank of America, N.A. v. Unknown Successors of Sarah Jane Lewis	2014 OK CIV APP 78	6/17/2014	9/23/2014
8	Judgement Lien Dormancy Tolled By Bankruptcy	El Reno Housing Associates v. Cowen	2014 OK CIV APP 85	6/12/2014	10/15/2014
9	Agriculatural Classification For Ad Valorem Taxes	American Southwest Properties, Inc. v. Tulsa County Board of Equalization	2014 OK CIV APP 90	6/23/2014	11/4/2014

10	Standing For Mortgage Foreclosure	Bank of America, N.A. v. Morris	2014 OK CIV APP 91	9/24/2014	11/4/2014
11	De-Annexation Procedure For A City	In Re: City of McLoud Initiative Petition 2010-2-De-Annexation	2014 OK CIV APP 94	6/20/2014	12/1/2014
12	Ad Valorem Tax Sale Notice To Mortgagee/Lender	Beneficial Financial I Inc. v. Love	2014 OK CIV APP 103	12/5/2014	12/29/2014
13	Standing To Foreclose Mortgage	Bank of America, N.A. v. Moody	2014 OK CIV APP 105	12/5/2014	12/29/2014
14	Adverse Possession Against The Sovereign	Waldrop v. The Hennessey Utilities Authority	2014 OK CIV APP 106	10/2/2014	12/29/2014
15	Ad Valorem Tax Resale Process	Chisolm Trail Construction L.L.C. v. Mueggberg	2014 OK CIV APP 108	11/19/2014	12/29/2014
16	Attorney Fees For Fed Action	Austin Place, L.L.C. v. Mart	2015 OK CIV APP 2	12/9/2014	1/7/2015
17	Will Residuary Clause Interpretation	In the Matter of the Estate of Bosworth	2015 OK CIV APP 3	12/11/2014	1/7/2015
18	Vested Property Rights	Material Service Corp. v. Town of Fitzhugh	2015 OK CIV APP 13	8/14/2014	2/13/2015
19	Standing To Foreclose Mortgage	Deutsche Bank National Trust Company v. Roesler	2015 OK CIV APP 36	3/20/2015	4/15/2015
20	Equitable Adoption	In the Matter of the Estate McGahey	2015 OK CIV APP 21	3/20/2015	5/7/2015
21	Interpretation Of Conveyance	Chapparal Energy, L.L.C. v. Samson Resources Company	2015 OK CIV APP 44	3/27/2015	5/7/2015

22	Standing To Foreclose Mortgage	Chase Home Finance LLC v. Gravitt	2015 OK CIV APP 46	1/27/2015	5/20/2015
23	Attorney Fees Under Nonjudicial Marketable Title Procedure Act	Kinslow Family Limited Partnership v. GBR Cattle, LLC	2015 OK CIV APP 47	4/24/2015	5/20/2015
24	Title Insurance Company Duty To Defend	OPY I, L.L.C. v. First American Title Insurance Co., Inc.	2015 OK CIV APP 49	12/19/2014	5/20/2015
25	Eminent Domain For Private Use	City of Muskogee v. Phillips	2015 OK CIV APP 57	11/21/2014	6/10/2015

B. OKLAHOMA COURT OF CIVIL APPEALS:

1. **ADVANCPIERRE FOODS, INC. v. GARFIELD COUNTY BD. OF TAXROLL CORRECTIONS (2014 OK CIV APP 62)**

TOPIC: AD VALOREM TAX EXEMPTION LOST

RULING: Affirmed: Where tax payer misses statutory deadline to apply for an ad valorem tax exemption, the Board of Tax Rolle Corrections has no jurisdiction to correct or change the assessments, where it is clear that the missed deadline was the tax payer's fault.

==========

2. **INVERNESS VILL. v. ENLOW (2014 OK CIV APP 63)**

TOPIC: AD VALOREM TAX REASSESSMENT AFTER PAYMENT

RULING: Affirmed: Where the taxpayer and the county entered an agreed judgment on the ad valorem tax assessment values for the taxpayer's property, and such tax was paid, a later reassessment is not allowed.

==========

3. **WELLS FARGO BANK, N.A. v. KINDLE (2014 OK CIV APP 67)**

TOPIC: DISMISSAL WITH PREJUDICE WITHOUT PROOF OF NOTICE

RULING: Reversed and Remanded: Where a mortgage foreclosure action is dismissed with prejudice (preventing re-filing) and the judgment roll fails to show personal or mail notice of the disposition hearing docket, an order denying a motion to vacate the dismissal is an abuse of discretion.

==========

4. **ONEWEST BANK, F.S.B. v. JACOBS (2014 OK CIV APP 72)**

TOPIC: STANDING TO FORECLOSURE MORTGAGE

RULING: Affirmed: When the assignee of a mortgage filed a mortgage foreclosure action using an unendorsed note, and the substituted successor to the plaintiff filed a motion for summary judgment attaching an indorsed-in-blank copy, along with uncontroverted evidence establishing that the initial mortgagee/lender intentionally delivered the unendorsed note to the assignee/plaintiff, the substituted successor non-holder in possession of the note also had standing to sue, because of such intentional delivery and it was proper to grant the summary judgment to the lender.

==========

5. **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. v. WILSON (2014 OK CIV APP 74)**

TOPIC: SECOND ATTACK FOR LACK OF STANDING

RULING: Affirmed: After judgment was rendered in favor of a mortgage foreclosure lender, and an initial appeal denied the borrower's attempt to challenge the lender's standing to foreclose, there cannot be a second attack on such standing in the trial court, because the earlier appeal stands as a bar to re-litigation and as the settled law of the case.

==========

6. **BRADY v. BRADY (2014 OK CIV APP 76)**

TOPIC: NUNC PRO TUNC ORDER CAN CHANGE SUBSTANCE

RULING: Affirmed: A divorce decree contained what was alleged to be a transposition of the husband and wife's name where the wife got title to real property and was meant to be liable for any debt on it, but the husband's name was incorrectly inserted, as established by the notes of

negotiations and the wife's subsequent payments; both matters being in the record on appeal. An order granting a nunc pro tunc order to correctly reflect the intent of the parties was affirmed.

==========

7. **BANK OF AMERICA, N.A. v. UNKNOWN SUCCESSORS OF SARAH JANE LEWIS (2014 OK CIV APP 78)**

TOPIC: MORTGAGE FORECLOSURE AND ADVERSE POSSESSION

RULING: Affirmed: Subsequent owner of poorly described tract of land, which was inadvertently covered by a non-owner's mortgage, successfully defeated a mortgage foreclosure (being sued *in rem*) and quieted title in self, and was awarded statutory attorney fees as the prevailing party in a mortgage lien dispute. A lengthy detailed discussion of adverse possession mentioned many interesting points, including (1) a fence is adequate evidence of "open and notorious" possession, and (2) one who acquires a conveyance from a person covering the disputed tract, where the grantor has already completed the required 15-year adverse possession period, does not have to continue to take actions to adversely possess such deeded land.

==========

8. **EL RENO HOUSING ASSOCIATES v. COWEN (2014 OK CIV APP 85)**

TOPIC: JUDGMENT LIEN DORMANCY TOLLED BY BANKRUPTCY

RULING: Affirmed: For a judgment and its related judgment lien to avoid becoming dormant and extinguished, the judgment and the lien must be renewed every 5-years; in this instance the 5-year re-filing period passed during the pendency of a debtor's bankruptcy, but because a renewal of judgment was filed within 30 days after the bankruptcy stay was lifted (as provided by statute), the judgment and lien continued to exist.

==========

9. **AMERICAN SOUTHWEST PROPERTIES, INC. v. TULSA COUNTY BOARD OF EQUALIZATION (2014 OK CIV APP 90)**

TOPIC: AGRICULTURAL CLASSIFICATION FOR AD VALOREM TAXES

RULING: Affirmed: The county assessor reassessed two tracts of land from agricultural to commercial purposes (from $5,250 to $1,290,400, and from $2,180 to $1,887,000, subject to the constitutional 5% per year increase cap), when it was shown the mowing of hay was for maintenance and not for profit, and where improvements were added to grant access to a cell phone tower on lands that were sold off. On appeal the trial and appellate courts sustained the assessor's decision.

==========

10. **BANK OF AMERICA, N.A. v. MORRIS (2014 OK CIV APP 91)**

TOPIC: STANDING FOR MORTGAGE FORECLOSURE

RULING: Affirmed: Bank took summary judgment for a mortgage foreclosure against a husband and wife, where only wife appeared (pre se). Wife sought, via an attorney, to vacate the judgment, asserting lack of standing by the Bank because the affidavit in support of the motion asserted that Bank "directly or through an agent, has possession of the Note." The appellate rejected such challenge, quoting a 1896 Oklahoma case which held "That the possession of the agent of the principal is too elementary to require the citation of authorities."

==========

11. **IN RE: CITY OF MCLOUD INITIATIVE PETITION 2010-2-DE-ANNEXATION (2014 OK CIV APP 94)**

TOPIC: DE-ANNEXATION PROCEDURE FOR A CITY

RULING: Affirmed: An initiative petition is not the proper procedure to de-annex parts of a city. The statutory procedure must be followed, which calls for a 3/4 vote of the persons being de-annexed. Otherwise, such initiative petition is a disguised untimely (i.e., more than 30 days after the annexation ordinance is adopted) referendum seeking to challenge an old annexation ordinance.

==========

12. **BENEFICIAL FINANCIAL I INC. v. LOVE (2014 OK CIV APP 103)**

TOPIC: AD VALOREM TAX SALE NOTICE TO MORTGAGEE/LENDER

RULING: Affirmed: Notice to a mortgage lender of an impending tax sale is adequate where the notice was mailed certified, return receipt requested (but "not deliverable as addressed/unable to forward"), and the county takes the additional steps of posting the notice on the door of the vacant residence, faxed the notice to a similar named entity, and published the notice. The original lender was apparently out of business, but the new lender failed to show it have filed any notice of the succession with a new address with either the treasurer or county clerk.

==========

13. **BANK OF AMERICA, N.A. v. MOODY (2014 OK CIV APP 105)**

TOPIC: STANDING TO FORECLOSE MORTGAGE

RULING: Affirmed: The inclusion of a blank endorsement on the note attached to the Petition establishes the plaintiff lender was the holder of the note at the time the foreclosure action was filed, and there was no authority cited to establish that the endorsing person was not authorized, and there was no authority cited to establish that the bank was prevented from simultaneously

pursuing loan modification under federal statutes while also seeking foreclosure. Summary judgment for the bank was affirmed.

==========

14. **WALDROP v. THE HENNESSEY UTILITIES AUTHORITY (2014 OK CIV APP 106)**

TOPIC: ADVERSE POSSESSION AGAINST THE SOVEREIGN

RULING: Affirmed: A city and public trust, as a subdivision of the State, which is a sovereign, cannot, by inaction, lose title to real property by adverse possession. "...the common law doctrine of sovereign immunity from liability has been substantially eroded and replaced by statutory enactments in this state. ...However, the bar to claims of prescriptive title to real property held for the public benefit by the political subdivisions of this state is based, not upon the immunity from tort liability enjoyed at common law by the state or its subdivisions, but rather on the rights of the public to the property." Consequently, "the property being once acquired for the construction and maintenance of [city's] sewage lagoons, the property could not, by mere non-use or acquiescence to the placement of the fence, be divested of its intended valid public use for which it was acquired without affirmative act of [city] to relinquish or abandon that public use."

==========

15. **CHISOLM TRAIL CONSTRUCTION L.L.C. v. MUEGGBURG (2014 OK CIV APP 108)**

TOPIC: AD VALOREM TAX RESALE PROCESS

RULING: Affirmed: The county treasurer sold lands for admittedly delinquent ad valorem taxes 3 years after such taxes were due, in a sale to a third party after the 2008 amendments eliminating the earlier tax certificate sale process. When the sale was challenged by the earlier

owner, who failed to pay the taxes, it was determined that an initial tax certificate sale or, in the alternative, a sale to the county was no longer necessary.

==========

16. **AUSTIN PLACE, L.L.C. v. MARTS (2015 OK CIV APP 2)**

TOPIC: ATTORNEY FEES FOR FORCIBLE AND DETAINER ACTION

RULING: Reversed: The trial court's order granting attorney fees to defendants treating them as prevailing parties in a forcible entry and detainer action was reversed, where the plaintiff dismissed the FED action before any the district court entered a final judgment and where no affirmative relief was granted.

==========

17. **IN THE MATTER OF THE ESTATE OF BOSWORTH (2015 OK CIV APP 3)**

TOPIC: WILL RESIDUARY CLAUSE INTERPRETATION

RULING: Affirmed: Where a will expressly devised the residuary portion of the decedent's estate to a caregiver, who was not a member of her family, and such interests included mineral interests, a challenge by the family to such distribution, based on some subsequent additional general language in the will mentioning a desire for the minerals to stay in the "Freeman family", was denied and the non-family member received the minerals.

==========

18. **MATERIAL SERVICE CORP. V. TOWN OF FITZHUGH (2015 OK CIV APP 13)**

TOPIC: VESTED PROPERTY RIGHTS

RULING: Affirmed: Lessee of a limestone quarry lease was prohibited by a subsequently enacted city ordinance against such mining, because such leasehold right did not amount to a "vested property right". The right had not yet vested due to the absence of the issuance of a

state mining license. The equitable argument that the lessee made substantial expenditure of money for improvements in reliance on the absence of a contrary zoning ordinance was rejected because most funds were expended after knowledge of the ordinance.

==========

19. **DEUTSCHE BANK NATIONAL TRUST COMPANY v. ROESLER (2015 OK CIV APP 36)**

TOPIC: STANDING TO FORECLOSE MORTGAGE

RULING: Affirmed: A summary judgment for a mortgage foreclosure in favor of the lender was affirmed in the face of a challenge to standing based on the lender using an unendorsed note on the initial petition, which was replaced by an undated signed endorsement on the note being attached to an amended petition.

==========

20. **IN THE MATTER OF THE ESTATE McGAHEY (2015 OK CIV APP 21)**

TOPIC: EQUITABLE ADOPTION

RULING: Affirmed: A summary judgment determining a stepchild was not equitably adopted was affirmed. Use of summary judgment in a probate proceeding was confirmed. There is not an assumption of equitable adoption solely due to a step-child/step-parent relationship; however, close. Without a formal verbal or written contract showing an intent to adopt, there can be no equitable adoption.

==========

21. **CHAPARRAL ENERGY, L.L.C. v. SAMSON RESOURCES COMPANY (2015 OK CIV APP 44)**

TOPIC: INTERPRETATION OF CONVEYANCE

RULING: Affirmed: Where the grantor owned an undivided 320 mineral acres in a 640 acre tract (a Section) , a conveyance (of minerals) granting "an undivided one-half (1/2) interest in and to all of the oil and gas interests and royalties, and any and all other mineral interests which may be owned by Circle F Ranch, Inc.", is a conveyance of one-half of the 320 mineral acres ("owned by Circle F Ranch, Inc.") being 160 mineral acres, rather than one-half of the entire 640 mineral acres in the Section.

==========

22. **CHASE HOME FINANCE LLC v. GRAVITT (2015 OK CIV APP 46)**

TOPIC: STANDING TO FORECLOSURE MORTGAGE

RULING: Vacated and Remanded for Further Proceedings: Where a trial court vacated a summary judgment foreclosure judgment over a year after such judgment was final, with such vacation being based on lack of proof by lender that it held the note by proper endorsement, such vacation was improper, because the lender attached the note to its petition showing an endorsement in blank, and the because the record showed that the note and mortgage were presented to the trial court at the time of the foreclosure judgment.

==========

23. **KINSLOW FAMILY LIMITED PARTNERSHIP v. GBR CATTLE COMPANY, LLC (2015 OK CIV APP 47)**

TOPIC: ATTORNEY FEES UNDER NONJUDICIAL MARKETABLE TITLE PROCEDURES ACT

RULING: Reversed: Where the prevailing party in a quiet title action prevails, and thereafter seeks to recover attorney fees under the Non-judicial Marketable Title Procedures Act, "substantial compliance" (in the face of the American rule requiring strict interpretation of any statutes allowing attorney fees) is not sufficient, and, therefore, the failure to provide the full

statutory period of time before filing a quiet title suit is fatal to a request for and an order granting attorney fees.

==========

24. **OPY I, L.L.C. v. FIRST AMERICAN TITLE INSURANCE CO., INC. (2015 OK CIV APP 49)**

TOPIC: TITLE INSURANCE COMPANY DUTY TO DEFEND

RULING: Affirmed: Where a buyer of real estate receives a title insurance policy and, thereafter, a subsequent tenant refuses to lease the land due to a continuing lawsuit (involving the seller but not the insured buyer) which lawsuit may or may not affect title to the land (it was a tort action and the lis pendens was expunged), the title insurer can refuse to participate in the litigation and refuse to file its own quiet title, but can choose to await the outcome of the litigation.

==========

25. **CITY OF MUSKOGEE v. PHILLIPS (2015 OK CIV APP 57)**

TOPIC: EMINENT DOMAIN, FOR PRIVATE USE

RULING: Reversed: The trial court was in error when it granted a condemnation for lands for use for a public parking lot to be used essentially exclusively for a private business, into perpetuity, unless substitute spaces were provided.

V. ATTORNEY GENERAL OPINIONS

(NONE)

VI. TITLE EXAMINATION STANDARDS CHANGES

A. EXAMINING ATTORNEY'S RESPONSIBILITIES

1. GENERAL RESPONSIBILITY

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

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

The Attorney General opined (1983 OK AG 281, ¶6-7) as follows:

> *Your second question raises the issue of whether the title examination for purposes of issuing a title policy must be done by a licensed attorney. A previous opinion of the Attorney General held:*
>
> > *"All such examinations of abstract .. . shall be conducted by a licensed attorney prior to issuance of the policy of title insurance." A.G. Opin. No. 78-151 (June 6, 1978).*
>
> *This opinion was based on the assertion that a title insurance policy "expresses an opinion as to the marketability of title." A.G. Opin. No. 78-151, supra. In reality, title insurance simply insures the policyholder against defects in the title. It does not express an opinion that the title is marketable. Land Title Company of Alabama v. State ex rel. Porter, 299 So.2d 289,295 (Ala.1974). While the rationale of the previous opinion is incorrect, we adhere to the conclusion expressed in that opinion that the examination of the abstract pursuant to 36 O.S. 5001(C) (1981) must be done by a licensed attorney. We reach this conclusion because the examination required by statute would only be useful if the examiner expressed an opinion on the marketability of the title. This constitutes the practice of law by the examiner. Land Title Company of Alabama v. State*

> *ex rel . Porter, supra at 295; Kentucky State Bar Association v. First Federal Savings & Loan, 342 S.W.2d 397 (Ky.App. 1961). The theory that the corporation is actually examining the title for itself through an agent or employee and thus not engaged in the practice of law is invalid since laypersons or nonprofessionals cannot perform legal services for their employers. Kentucky State Bar Association v. Tussey, 476 S.W.2d 177 (Ky.App. 1972). There is no prohibition, however, against licensed staff attorneys furnishing title opinions for the company as long as these opinions are not sold or given to third parties. The Florida Bar v. McPhee, 195 So.2d 552 (Fla. 1967); Steer v. Land Title Guarantee & Trust Co., 113 N.E.2d 763 (Ohio Com.Pl. 1953).* (underlining added)

As noted above, under the discussion of new Statutes, 36 O.S. § 5001 was amended, effective July 2007, to specifically require the examination described in that Section to be conducted by a licensed Oklahoma attorney, thereby prohibiting laymen and non-Oklahoma licensed attorneys from undertaking title exams for title insurance purposes.

2. LIABILITY OF TITLE EXAMINERS TO NON-CLIENTS

While there is no foolproof way to avoid liability to non-clients, it is usually a good practice to have both the inside address of the title opinion (i.e., the addressee) and limiting language, elsewhere in the opinion, expressly designate the sole person or company expected to rely on the opinion.

However, even where the opinion is addressed to a specific person or entity, it is possible that due to the particular circumstances surrounding the transaction, the attorney who is representing one party, such as the lender -- and rendering an opinion directed solely to that lender -- might be held to be liable to the opposing party, such as the borrower, as well.

As noted in an Oklahoma case considered by the 10th Circuit U.S. Court of Appeals, Vanguard Production, Inc. v. Martin, 894 F.2d 375 (10th Cir. 1990):

> *The Oklahoma Supreme Court replied that the pledgee's complaints stated a cause of action under Oklahoma law. Privity of contract does not apply to tort actions under Oklahoma law. See Keel v. Titan Constr. Corp., 639 P.2d 1228, 1232 (Okla. 1981). The Bradford court stated that to determine an attorney's negligence the jury must determine whether the attorney's conduct was "the conduct of an ordinarily*

prudent man based upon the dangers he should reasonably foresee TO THE PLAINTIFF OR ONE IN HIS POSITION in view of all the circumstances of the case such as to bring the plaintiff within the orbit of defendant's liability." Id. at 191 (emphasis in original).

***

In our view a contract for legal services is a contract for services giving rise to the duty of workmanlike performance. The record in this case reveals extensive communications between the attorneys [for the lender], Martin and Morgan, and the purchaser, Vanguard [the borrower], concerning the [lender's] title opinion. The record also shows that all parties, including Martin, Morgan, [the borrower] Vanguard, and [the lender] Glenfed, were concerned about the Texas Rose Petroleum suit. Thus, we find that an ordinarily prudent attorney in the position of the defendants would reasonably have apprehended that[the borrower] Vanguard was among the class of nonclients which, as a natural and probable consequence of the attorneys' actions in preparing the title opinion for Glenfed, could be injured. Thus, we hold that the defendants owed a duty of ordinary care, Bradford, 653 P.2d at 190, and workmanlike performance, Keel, 639 P.2d at 1231, to Vanguard in the performance of their contract for legal services with Glenfed. We stress that our holding only addresses the question of the duty of the defendants owed to Vanguard and not the question of whether Martin's, Morgan's and Ames, Ashabranner's acts were the proximate cause of Vanguard's injuries. See Bradford, 653 P.2d at 190-91; Keel, 639 P.2d at 1232. (underlining added)

An interesting Oklahoma Court of Appeals case was decided in 1991, American Title Ins. v. M-H Enterprises, 815 P.2d 1219 (Okl. App. 1991). Therein it was held that a buyer of real property can sue (i.e., via counter claim) the title insurer for negligence in the preparation of a title policy, even if the title insurance policy was issued only in favor of the buyer's lender. This rule was applied where: (1) no abstract was prepared, (2) an attorney's title examination was not undertaken, and (3) the insurer/abstractor missed a recorded first mortgage. The facts of the case showed that, after the buyer/borrower lost the house through a foreclosure of the missed first mortgage, the insurer paid the insured second mortgage holder to settle under the terms of the title insurance policy and had such lender assign the worthless second note and mortgage to the insurer. The insurer then sued the buyer/borrower under the warranty of title in the second mortgage. The appellate court held that while the buyer/borrower was not a named insured, the insurer's own

negligence (i.e., no abstract and no examination) caused the loss, and that the insurer did not buy the note and mortgage as a holder in due course, because (1) no value was paid for the acquisition of the note and mortgage (i.e., the payment was to settle its obligations under the policy) and (2) the note and mortgage were already in default when the insurer took an assignment of them.

The message in these two cases appears to be that a party that conducts either the examination or insures the title, can be held liable for an error in such effort to a third party. This is true even where the title examiner and title insurer had not expressly entered into any contractual relationship with such third party. Based upon these two cases, it appears that this liability might arise even where the attorney or insurer specifically directed his opinion or policy to only one of the multiple participants in the transaction.

A fairly new Oklahoma Supreme Court case has included some language that might be considered dicta, but which, when taken at face value, turns some existing understandings of actual notice and agency relationships on their head. While the Oklahoma Supreme Court was only ruling on the issue of who was the prevailing party in a combined foreclosure and quiet title suit -- for attorney fees purposes -- the failure of the Supreme Court to take the opportunity to correct the prior unpublished COCA opinion creates some serious unintended consequences. In Benefiel v. Boulton, 2015 OK 32, the Supreme Court ruled:

¶4 Boulton [Defendant] initiated an appeal of the trial court judgment, and on March 31, 2011, COCA reversed the ruling and remanded the matter for further proceedings (Boulton I). The opinion in Boulton I made several findings which are relevant to the present appellate proceeding. First, COCA determined that Plaintiff's [Benefiel's] judgment lien was properly perfected.[1] [citing to Boulton I] Specifically, COCA found that notwithstanding Plaintiff's failure to file the divorce decree with the Seminole County Clerk, inclusion of the judgment in the abstract of title provided Boulton with actual notice of the lien. Therefore, Boulton purchased the residence subject to a valid preexisting encumbrance. Second, COCA noted the judgment lien was "analogous to a real estate mortgage lien which secures a specific parcel of real property for the payment of a sum of money."[2] Finally, the COCA opinion reversed summary judgment, finding the reversionary provision in the divorce decree was void because it deprived Boulton of the right to redeem the

property.[3] *On October 17, 2011, we granted certiorari for the limited purpose of vacating an appeal-related attorney fee award to Boulton issued by COCA. We issued an order which postponed a final ruling on attorney fees and directed the parties to submit their applications in the trial court once a prevailing party could be determined.*[4]

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

While it may be the practice of some or all abstract companies to include such unperfected divorce decrees in their abstracts, such practice puts the title examiner in the awkward position of being aware of an unrecorded and, therefore, an unperfected lien. In First Community Bank v. Hodges, 1995 OK 124, the court held that because a divorce decree was recorded in the land records, pursuant to 16 O.S. §31, the judge-made lien created therein was "perfected" as to third parties, and specifically as to a bank seeking to have its properly filed judgment lien (under 12 O.S. §706) declared senior to such judge-made and recorded divorce decree lien for property division. Recording a judge-made lien seems necessary to its perfection.

In Benefiel the abstract company's inclusion of the decree was, apparently, not because the decree was a necessary link in the wife's chain of title, since the husband had given the wife a separate deed to the land. The title examiner in such circumstances can either require the release of the unrecorded and unperfected lien (unperfected as to the buyer, who would have been a BFP), and be accused of making creating curative requirements caused solely due to the abstract company's

action, or, as happened here, the title examiner can omit mentioning the judge-made property division lien created in the decree, and force the buyer into the position of being given "actual notice", despite the buyer's lack of any personal knowledge of the decree and its lien. The Supreme Court could have avoided such unintended consequences by correcting or at least explaining such significant holdings. Does such relationship between the title company's title examiner and the third party insured/buyer create a "two way" street, where the buyer gets notice based on the title examiner's knowledge and as a consequence the buyer gets to sue the title examiner for his alleged negligence in omitting such significant information? Such liability by the title examiner to the third party buyer is already suggested in the earlier case of Vanguard, discussed immediately above, where the lender's title attorney was potentially liable to the buyer for an allegedly defective title opinion. This matter bears watching and possible clarification by the Supreme Court.

3. STATUTE OF LIMITATIONS ON TITLE OPINIONS

In terms of the nature of (i.e., tort vs. contract), and the statute of limitations on, attorneys' errors in examination of title, it should be noted that in 1985 the Oklahoma Supreme Court held:

> *In Oklahoma, an action for malpractice, whether medical or legal, though based on a contract of employment, is an action in tort and is governed by the two-year statute of limitations at 12 O.S.A. 1981, § 95 Third. (Seanor v. Browne, 154 Okl. 222, 7 P.2d 627 (1932)). This limitation period begins to run from the date the negligent act occurred or from the date the plaintiff should have known of the act complained of. (McCarroll v. Doctors General Hospital, 664 P.2d 382 (Okl. 1983)). The period may be tolled, however, by concealment by the attorney of the negligent acts which injured the client. This Court has previously held, in Kansas City Life Insurance Co. v. Nipper, 174 Okl. 634, 51 P.2d 741 (1935) that:*
>
> > *One relying on fraudulent concealment to toll the statute of limitation must not only show that he did not know facts constituting a cause of action, but that he exercised reasonable diligence to ascertain such facts.*

(underlining added)

(Funnell v. Jones, 737 P.2d 105 (Okla. 1985))

However, in 1993 the Oklahoma Supreme Court "clarified" their holding in Funnell by declaring:

> *Appellees argue the instant case should be controlled by Funnell v. Jones, 737 P.2d 105 (Okla. 1985), cert. denied, 484 U.S. 853, 108 S.Ct. 158, 98 L.Ed.2d 113 (1987), a case where we applied the two year tort limitation period to a legal malpractice case. Appellees' reliance on Funnell is misplaced. The opinion in Funnell gives no indication a separate contract theory was alleged there or that the plaintiffs there attempted to rely on the three year limitation period for oral contracts. Thus, our statement in Funnell to the effect an action for malpractice, whether legal or medical, though based on a contract of employment, is an action in tort, must be taken in the context it was made, to wit: determining whether the two year limitation for torts was tolled based on allegations of fraudulent concealment on the part of defendant attorneys and that no acts alleged against defendants occurred within the two years immediately preceding filing of the lawsuit. Id. at 107-108. We did not decide in Funnell a proceeding against a lawyer or law firm is limited only to a proceeding based in tort no matter what the allegations of a petition brought against the lawyer or law firm. We have never so held and, in fact, to so rule would be tantamount to treating lawyers differently than we have treated other professions, something we refuse to do.*
>
> *We have held a party may bring a claim based in both tort and contract against a professional and that such action may arise from the same set of facts. Flint Ridge Development Company, Inc. v. Benham-Blair and Affiliates, Inc., 775 P.2d 797, 799-801 (Okla. 1989) (architectural, engineering and construction supervision services). In essence, the holding of Flint Ridge is if the alleged contract of employment merely incorporates by reference or by implication a general standard of skill or care which a defendant would be bound independent of the contract a tort case is presented governed by the tort limitation period. Id. at 799-801. However, where the parties have spelled out the performance promised by defendant and defendant commits to the performance without reference to and irrespective of any general standard, a contract theory would be viable, regardless of any negligence on the part of a professional defendant. Id. As pertinent here, the specific promise alleged or reasonably inferred from the petition and documents attached thereto was to search the records of the County Clerk for an approximate nine (9) year period and report those records on file affecting the title for loan purposes. Simply, if this was the promised obligation a contractual theory of liability is appropriate which is governed by the three year limitation period applicable to oral contracts.* (underlining added)

(Great Plains Federal Savings & Loan v. Dabney, 846 P.2d 1088, 1092 (Okla. 1993))

[See: Article #227 at www.Eppersonlaw.com: "The Elusive Legal Malpractice Statute of Limitations for Attorney Title Opinions."]

B. NEED FOR STANDARDS

1. BACKGROUND AND AUTHORITY OF STANDARDS

The first set of Statewide Standards was adopted in 1938 by the Connecticut Bar Association. On November 16, 1946 the General Assembly and House of Delegates of the Oklahoma Bar Association ("OBA") approved 21 Title Examination Standards ("Standards") for the first time in state history. 17 O.B.J. 1751. Of these 21, there were 10 without any specific citation of authority expressly listed. There are currently over 100 Standards in Oklahoma, and about 13 of these have no specific citation of authority (i.e., no citation of supporting Oklahoma statutes or case law).

In Oklahoma, new and revised Standards are developed and considered each year at 9 monthly Title Examination Standards Committee ("Standards Committee") meetings held from January to September. These proposals are then presented annually by the Standards Committee to the OBA Real Property Law Section ("Section") at the Section's annual meeting, usually held in November of each year. Immediately thereafter, the Section forwards to the OBA House of Delegates ("House"), for the House's consideration and approval, on the day following the Section meeting, any new or revised Standards which were approved at the Section's meeting.

All Oklahoma Supreme Court opinions are binding and must be followed by all trial court judges, meaning that such decisions are “precedential”. However, an opinion of one of the multiple intermediate 3-judge panels of Courts of Civil Appeals is only “persuasive” on future trial judge’s decisions, and not binding.

Oklahoma’s set of Standards have received acceptance from the Oklahoma Supreme Court which has held:

> *While [the Oklahoma] Title Examination Standards are not binding upon this Court, by reason of the research and careful study prior to their adoption and by reason of their general acceptance among members of the bar of this state since their adoption, we deem such Title Examination Standards and the annotations cited in support thereof to be persuasive.* (underlining added)

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

The Standards become binding between the parties:

(1) IF the parties' contract incorporates the Standards as the measure of the required quality of title, for example:

(a) Standard 2.2 REFERENCE TO TITLE STANDARDS provides: *"It is often practicable and highly desirable that, in substance, the following language be included in contracts for a sale of real estate: 'It is mutually understood and agreed that no matter shall be construed as an encumbrance or defect in title so long as the same is not so construed under the real estate title examination standards of the Oklahoma Bar Association where applicable;'"* (emphasis added) and

(b) the Oklahoma City Metropolitan Board of Realtors standard contract provides*: "7. TITLE EVIDENCE: Seller shall furnish Buyer title evidence covering the Property, which shows marketable title vested in Seller according to the title standards adopted by the Oklahoma Bar Association. . .",* (emphasis added) or

(2) IF proceeds from the sale of oil or gas production are being held up due to an allegedly unmarketable title [52 O.S. 570.10.D.2a; also see: Hull, et al. v. Sun Refining, 789 P.2d 1272 (Okla. 1990) ("Marketable title is determined under §540 [now §570.10] pursuant to the Oklahoma Bar Association's title examination standards.")].

In these above instances, the parties might be subject to suits to specifically enforce or to rescind their contracts, to seek damages, or to pay increased interest on the withheld proceeds (i.e.,

6% vs. 12%), with the Court's decision being based on the "marketability" of title as measured, where applicable, by the Standards.

However, it should be noted that *"It is, therefore, the opinion of the Attorney General that where there is a conflict between a title examination standard promulgated by the Oklahoma Bar Association and the Oklahoma Statutes, the statutory provisions set out by the Legislature shall prevail."* Okl. A.G. Opin. No. 79-230.

2. IMPETUS FOR STANDARDS: PROBLEMS WITH SEEKING PERFECT TITLE

The title examiner is required, as the first step in the examination process, to determine what quality of title is being required by his client/buyer or client/lender before undertaking the examination.

According to Am Jur 2d:

> *An agreement to sell and convey land is in legal effect an agreement to sell a title to the land, and in the absence of any provision in the contract indicating the character of the title provided for, the law implies an undertaking of the part of the vendor to make and convey a good or marketable title to the purchaser. A contract to sell and convey real estate ordinarily requires a conveyance of the fee simple free and clear of all liens and encumbrances. There is authority that the right to the vendee under an executory contract to a good title is a right given by law rather than one growing out of the agreement of the parties, and that he may insist on having a good title, not because it is stipulated for by the agreement, but on his general right to require it. In this respect, the terms "good title," "marketable title," and "perfect title" are regarded as synonymous and indicative of the same character of title. To constitute such a title, its validity must be clear. There can be no reasonable doubt as to any fact or point of law upon which its validity depends. As is sometimes said, a marketable title must be one which can be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence.* (underlining added)
> (77 Am Jur 2d §115 Title of Vendor: Generally; Obligation to furnish good or marketable title)

> *While, in the absence of any provisions in a contract for the sale of land indicating the character of the title to be conveyed, the law implies an obligation or undertaking on the part of the vendor to convey or tender a good and marketable title, if the contract expressly stipulates as to the character of the title to be furnished*

by the vendor, the courts give effect thereto and require that the title offered conform to that stipulation, it is immaterial that it may in fact be a good or marketable title. A contract to convey a specific title is not fulfilled by conveying another and different title. On the other hand, when the title which the vendor offers or tenders conforms to the character of title stipulated in the contract of sale, the vendee is bound to accept it although the title may not be good or marketable within the meaning of the obligation or undertaking to furnish such a title which the law would have implied in the absence of any stipulation. Refusal to accept title tendered in accordance with the terms of sale constitutes a breach by the purchaser of land of his contract to purchase. If a contract for the purchase of real estate calls for nothing more than marketable title, the courts cannot substitute a different contract therefor. (underlining added)
(77 Am Jur 2d §123 Special Provisions as to character of title: Generally.)

The terminology which is used to define the quality of title to real property has apparently changed over time. Patton notes:

In the early law courts, titles as between vendor and purchaser were either good or bad; there was no middle ground. No matter how subject to doubt a purchaser might prove the title to be, he was under obligation to take it, unless he could prove that it was absolutely bad. But the courts of equity coined the expression "marketable title," to designate a title not necessarily perfect, or even good, in the law sense, but so free from all fair and reasonable doubts that they would compel a purchaser to accept it in a suit for specific performance. Conversely, an unmarketable title might be either one that was bad, or one with such a material defect as would cause a reasonable doubt in the mind of a reasonable, prudent, and intelligent person, and cause him to refuse to take the property at its full or fair value. Therefore the term "unmarketable title" includes both "bad titles" and "doubtful titles." Though originally there might have been a difference between a "good title" and a "marketable title," now the terms are used interchangeably. Other equivalent terms appear in the notes. A perfect record title may not be marketable, because of apparent defects, which cause reasonable doubts concerning its validity, and a good or marketable title may be far from perfect, because of hidden defects. In fact, under either the English system of unrecorded conveyances, or under the system afforded by our recording acts, "it is impossible in the nature of things that there should be a mathematical certainty of a good title." While examiners should be cautious in advising clients as to the acceptance of a title, neither should they frighten them by advertising these relatively infrequent dangers; and they must remember that a purchaser cannot legally demand a title which is absolutely free from all suspicion or possible defect. He may require only such a title as prudent men, well advised as to the facts and their legal bearings, would be willing to accept. Many courts further hold that a doubt sufficient to impair the character of marketableness must be such as will affect the selling value of the property or interfere with the making of a sale.

If unmarketable, the doubt which makes it so may be based upon an uncertainty either as to a fact or as to the law. If objection is made because of doubt upon a question of law, this does not make the title unmarketable unless the question is fairly debatable -- one upon which the judicial mind would hesitate before deciding it. Likewise as to a question of fact, there must be a real uncertainty or a difficulty of ascertainment if the matter is to affect marketability. A fact which is readily ascertainable and which may be readily and easily shown at any time does not make title unmarketable. For instance, where a railway company reserved a right of way for its road as ***now*** *located and constructed or hereafter to be constructed, the easement depended on the fact of the* ***then*** *location of the line; and as the evidence showed that no line had then been located, and as the matter could be easily and readily proved at any time, the clause did not make plaintiff's title unmarketable. But where there are known facts which cast doubt upon a title so that the person holding it may be exposed to good-faith litigation, it is not marketable.*

Recorded muniments form so generally the proofs of title in this country, that the courts of several jurisdictions hold not only <u>that a good or marketable title must have the attributes of that term as used by the equity courts, but also that it must be fairly deducible of record.</u> This phase of the matter will be considered further in the ensuing section.

Determination of questions as to the marketability of titles is peculiarly within the province of counsel for buyer or mortgagee. Counsel for the owner will not only endeavor to remedy the condition of the title as to any requirements which he concedes to be proper, but usually finds it easier to do so than to contest the matter, even as to matters not so conceded. In the main it is only when compliance is impossible or when time for compliance is lacking or has passed that the question reaches the courts. Even then a decision is not always possible. This is because courts usually will not undertake to determine doubtful questions involving the rights of others who are not parties to the action. (underlining)
(**§**46. Classification of Vendor Titles)

Title insurance, like most types of insurance, insures against loss due to certain conditions. One of these conditions which triggers liability is "unmarketability of title". Such term is defined in such policy as: "an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which could entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title." (ALTA Owner's Policy (10-21-87)) Such definition is

sufficiently circular to require the interpretation of the applicable State's law in each instance to determine whether specific performance would be enforced in such jurisdiction.

In summary, it appears that "marketable title" means (1) the public record affirmatively shows a solid chain of title (i.e., continuous and uninterrupted) and (2) the public record does not show any claims in the form of outstanding unreleased liens or encumbrances. This "good record title" can be conveyed and backed up by the delivery of a deed to the vendee containing sufficient warranties to ensure that the vendor must make the title "good in fact", if non-record defects or non-record liens and encumbrances surface later.

However, to the extent that a contract provision -- providing that the vendor must convey "marketable title" -- is interpreted to require title to be free from "all reasonable doubt", it opens the door to differences of opinion between persons of "reasonable prudence". As noted in Bayse:

> *Time cures certain errors in conveyancing by means of statutes of limitations. The healing effect of curative legislation removes other defects of conveyancing. But operation of these kinds of legislation neither defines nor declares what constitutes a marketable title. The usual definition of a marketable title is one which is free from all reasonable doubt. This negative approach is not now satisfactory, for it is a rare title concerning which an examiner cannot entertain some doubt with respect to some transaction in its history.* (underlining added)
> (Paul E. Bayse, Clearing Land Titles (herein "Bayse"): §8. Legislation)

It is this focus on looking for a defect -- any defect -- whether substantive or merely a technical one, that can cause the system to bog down. If there is more than a single title examiner within a community, there is also the possibility of there being a wide range of examination attitudes resulting in differing conclusions as to the adequacy of the title.

In "Increasing Land Marketability Through Uniform Title Standards", 39 Va.L.Rev. 1 (1953), John C. Payne, (herein "Increasing Marketability") the problems caused by each examiner exercising unbridled discretion are noted:

When the examiner, upon the basis of these decisions, has found that the present vendor can convey a title which is good in fact, he must then ask whether the title has the additional characteristic of marketability. What constitutes a marketable title? Here again legal definitions are subordinate to functional meaning. What the purchaser of land wants is a title which not only can be defended but which can be presented to another examiner with the certainty that it will be unobjectionable. It is small comfort to the owner that he has not been disseized if he is unable to sell or mortgage. If one and the same examiner passed all titles in a given locality, the title which the examiner considered good as a practical matter would, of course, also be merchantable. But such is not the case, and the present examiner must anticipate that his client will in the future attempt to either sell or mortgage and that the same title will come under the scrutiny of some other examiner. In each of the decisions which an examiner has made in determining the validity of a title he has had to exercise sound legal and practical judgment. Will a second examiner, vested with the same wide discretion, reach the same conclusion? If his conclusion is different and he rejects the title, the professional reputation of the first examiner will be impaired and his client may suffer substantial financial loss. Faced with this uncertainty, many examiners have adopted a solution which emphasizes individual security rather than the general facility of land transfers. This is the practice known as "construing against title," or more picturesquely, as "flyspecking." These terms indicate that the examiner indulges in a minimum of presumptions of law and fact, demands full search of title in every instance, and places no reliance upon the statute of limitations. As a consequence he considers all errors of record as substantial. The result of even a ***single examiner*** *in a community adopting this practice is to set up titles which are practically good in fact. Examiner* ***A*** *rejects a title on technical grounds. Thereafter, Examiner* ***B****, to whom the same problem is presented, feels compelled to reject any title presented to him which exhibits a similar defect. Examiner* ***A*** *is thereupon confirmed in the wisdom of his initial decision, and resolves to be even more strict in the future. It is sometimes said that the practice of construing against title reduces an entire bar to the standards of its most timorous member. This is an understatement, for the net effect is an extremity obtained only by mutual goading.*

The consequences of construing against title are iniquitous, and the practice itself is ridiculous in that it is predicated upon a theoretical perfection unobtainable under our present system of record land titles. Many titles which are practically unassailable become unmarketable or the owners are put to expense and delay in rectifying formal defects. Examiners are subjected to much extra labor without commensurate compensation, and the transfer of land is retarded. As long as we tolerate periodic re-examination of the same series of non-conclusive records by different examiners, each vested with very wide discretion, there is no remedy for these difficulties. However, some of the most oppressive results may be avoided by the simple device of agreements made by examiners in advance as to the general standards which they will apply to all titles which they examine. Such agreements may extend to: (1) the duration of search; (2) the effect of lapse of time upon defects

of record; (3) the presumptions of fact which will ordinarily be indulged in by the examiner; (4) the law applicable to particular situations; and (5) relations between examiners and between examiners and the public. Where agreements are made by title examiners within a particular local area having a single set of land records, such agreements may extend even further and may embrace the total effect of particular specific records. For example, it may be agreed that certain base titles are good and will not thereafter be examined or that specific legal proceedings, normally notorious foreclosures and receivership actions, will be conclusively deemed effective. Although such agreements may not be legally binding upon the courts, they may go far toward dispelling the fear that if one examiner waives an apparent defect of title it may be deemed a cloud upon the title by a subsequent examiner. The result is an increase in the marketability of land and a reduction of the labor imposed upon the proponent of the title. The obvious utility of such an arrangement has led to the adoption of uniform standards for the examination of titles by an increasing number of bar associations. (underlying added)

The problems resulting from this quest for perfect title can impact the examiner and his clients in several ways:

1. The legal fees charged to the public are higher because each examination for a parcel must always go back all the way to sovereignty (or, in some states, back to the root of title);
2. The costs to cure minor defects are often relatively large compared to the risk being extinguished;
3. The unexpected costs to remedy problems already existing when the vendor came into title, which were waived by the vendor's attorney, are certainly not welcomed by the public; and
4. The prior examiner looks inept and/or the subsequent examiner looks unreasonable, when a preexisting defect is waived by one attorney and "caught" by the next.

(John C. Payne, "The Why, What and How of Uniform Title Standards", 7 Ala.L.Rev. 25 (1954) (herein "The Why of Standards")).

In addition, friction and lowering of professional cooperation increase between the title examining members of the bar as they take shots at each other's work. This process of adopting an increasingly conservative and cautious approach to examination of titles creates a downward spiral. As noted in Bayse:

Examiners themselves are human and will react in different ways to the same factual situation. Some are more conservative than others. Even though one examiner feels

that a given irregularity will not affect the marketability of a title as a practical matter, he is hesitant to express his opinion of marketability when he knows that another examiner in the same community may have occasion to pass upon the title at a later time and would undoubtedly be more conservative and hold it to be unmarketable. Under these circumstances he is inclined to be more conservative himself and declare the title to be unmarketable. People do not like to be required to incur expense and effort to correct defects which do not in a practical sense jeopardize a title when they have already been advised that their title is marketable. The public becomes impatient with a system that permits such conservative attitudes.

If the same examiner passed judgment upon all title transactions, this situation would remain dormant. Unfortunately such is not the case. Or if all examiners would hold the same opinion as to specific irregularities in titles, this complication would not arise. But this also is not the case. The result in many communities has been greatly depressive, sometimes tragic. (underlining added)
(Bayse: §7. Real Estate Standards)

The State of Oklahoma used to have one of the most strict standards for "marketable title" which was caused by the interpretation of the language of several early Oklahoma Supreme Court cases. The current title standard in Oklahoma has been changed, as of November 10, 1995, to be less strict. It now provides:

1.1 MARKETABLE TITLE DEFINED

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

In response to this obvious need to avoid procedures that alienated the public and caused distance to grow between examiners, a movement began and mushroomed in a couple of decades throughout the country to adopt uniform title examination standards. Such standards were adopted first in local communities by the practicing bar and then on a statewide basis. Although there is some competition among local bars for the place of honor, it appears that the local bar of Livingston County, Illinois adopted a set of 14 standards on April 7, 1923. Thereafter, in 1933 or 1934, the Gage County Nebraska Bar Association formulated 32 title standards. The Connecticut Bar, in 1938, became the first state to have statewide standards by adopting a set of 50. ("Increasing

Marketability")

Over the years, since 1938, a total of 31 States have adopted statewide sets of Standards. Of these, there are currently 19 States which have sets of Standards which have been updated in the last 5 years. In the recent past, 4 States have adopted their first sets of Standards including: Vermont (1995), Arkansas (1995), Texas (1997) and Louisiana (2001). See the attached National Title Examination Standards Resource Center Report, and see my web site at www.eppersonlaw.com for more details on the status of Standards in other States.

C. NEWEST CHANGES TO TITLE STANDARDS

The revised Standards and new Standards, discussed below, were considered and approved by the Standards Committee during the most recent January-September period. The proposed changes and additions were then published in the Oklahoma Bar Journal in October, and were then considered and approved by the Section at its annual meeting in November. They were thereafter considered and approved by the OBA House of Delegates in November. These changes and additions became effective immediately upon adoption by the House of Delegates. A notice of the House's approval of the proposed new and revised Standards was thereafter published in the Oklahoma Bar Journal. The new "TES Handbook", containing the updated versions of these Standards, is printed and mailed to all Section members by January.

The following sections display and discuss the Proposals which were submitted to the Section and the House of Delegates for their approval. The text for the discussion is taken from the Annual Report published in the Oklahoma Bar Journal in October. This text was prepared by the Title Examination Standards Handbook Editor for the OBA Real Property Law Section, Jack Wimbish, a Committee member from Tulsa. Note that where an existing standard is being revised, a “legislative” format is used below, meaning additions are underlined, and deletions are shown by

[brackets].

A brief explanatory note precedes each Proposed Standard, indicating the nature and reason for the change proposed.

ATTACHED IS A SET OF REVISED TITLE EXAMINATION STANDARDS:

THE FOLLOWING 2015 T.E.S. REPORT WAS SUBMITTED TO THE NOVEMBER 5, 2015 ANNUAL REAL PROPERTY LAW SECTION MEETING AND THE NOVEMBER 6, 2015 OBA HOUSE OF DELEGATES MEETING AND HAS BEEN APPROVED. THESE STANDARDS ARE EFFECTIVE IMMEDIATELY UPON THEIR APPROVAL BY THE HOUSE OF DELEGATES.

2015 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2015, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 6, 2015. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Oklahoma City on Thursday, November 5, 2015.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 6, 2015. Proposals adopted by the House of Delegates become effective immediately.

An explanatory note precedes each proposed Title Standard, indicating the nature and reason for the change proposed.

PROPOSAL NO. 1

The Committee proposes an amendment to Standard No. 6.7 to add a new Standard 6.7 D., and to amend Standard 6.7 C. and E. to reflect the changes in the statute to which the Standard applies.

C. An instrument that otherwise conforms with the provisions of Paragraph "A" above fails to vest title in the grantee if, prior to November 1, 2015, the power of attorney has otherwise terminated by law and such termination either appears in the abstract or is within the personal knowledge of the examiner.

D. An instrument that otherwise conforms with the provisions of Paragraph "A" above fails to vest title in the grantee if, on or after November 1, 2015, notice of revocation of the power of attorney has been recorded in the county clerk's office in the county in which the power of attorney was recorded.

Authority: 15 O.S. §§ 1001-1020; 16 O.S. §§ 3, 20, 21, 27a and 53; 58 O.S. § 1071 *et. seq.*

E. An instrument that otherwise conforms with the provisions of Paragraph "A" above fails to vest title in the grantee if, prior to November 1, 2015, the power of attorney has terminated by law by reason of the appointment of a conservator or guardian of the principal as set out below:

1. For a durable power of attorney which does not contain a nomination of the person to act as conservator or guardian, such power of attorney terminates by reason of the appointment, on or after November 1, 2010, of a conservator of the estate, or guardian of the estate, of the principal in such power of attorney and upon notice of such appointment as required by statute; or

2. For a durable power of attorney containing a nomination of the person to act as conservator or guardian, such power of attorney terminates by reason of the appointment, on or after November 1, 2010, of a conservator of the estate, or guardian of the estate or guardian of the person, of the principal in accordance with such nomination contained in the power of attorney upon notice of such appointment as required by statute.

Authority: 58 O.S. § 1074.

PROPOSAL NO. 2

The Committee proposes to add new Standard No. 15.2.1 to clarify who is a proper grantor of conveyance by an Express Private Trust or the Trustee of an Express Private Trust.

15.2.1 CONVEYANCES BY AN EXPRESS PRIVATE TRUST OR BY THE TRUSTEE OR TRUSTEES OF AN EXPRESS PRIVATE TRUST

When record title to real property is held in the name of a trustee or trustees of a named ıte trust, a subsequent, otherwise valid, conveyance identifying such trust as the grantor, ıe trustee or trustees of such trust as the grantor, shall not be deemed to be a defect of title, npliance with 60 O.S. § 175.6a.

B. When record title to real property is held in the name of an express private trust, rather than in the trustee or trustees of such trust, a subsequent, otherwise valid, conveyance identifying the trustee or trustees of the named trust as the grantor shall not be deemed to be a defect of title, subject to compliance with 60 O.S. § 175.6a.

Authority: 16 O.S. § 1 and 60 O.S. §§ 175.6a, 175.7, 175.16, 175.17, 175.24, and 175.45

PROPOSAL NO. 3

The Committee recommends that Comment No. 1 of Standard 17.4 be amended to accurately reflect the provisions of the Non-Testamentary Transfer of Property Act as they have been amended from time to time and the comments renumbered.

17.4 Transfer-on-Death Deeds

A deed appearing of record executed in accordance with the "Non-Testamentary Transfer of Property Act" should be accepted as a conveyance of grantor's interest in the real property described in such deed effective upon the death of the grantor, provided that an affidavit evidencing the death of such grantor has been recorded, as specified in the Act, and no evidence appears of record by which:

A. The conveyance represented by such deed has otherwise been revoked, disclaimed or has lapsed pursuant to the provisions of the Act; or

B. The designation of the grantee beneficiary or grantee beneficiaries in such deed has been clanged via a subsequent transfer-on-death deed pursuant to the provisions of the Act.

Authority: 58 O.S. § 1251, *et seq.*

Comment 1: On and after November 1, 2008, through October 31, 2011, a disclaimer under the provisions of the Act may be executed only within a period of time ending nine (9) months after the death of the owner/grantor. On and after April 20, 2015, for deaths occurring prior to November 1, 2011 and for which there is no disclaimer of interest in the real estate, the recording of the acceptance affidavit is not subject to the nine-month limitation set out in Section 1252(D). On and after November 1, 2011, the property reverts to the estate of the deceased grantor if the affidavit described in § 1252 C and D is not recorded within nine (9) months of the grantor's death.

PROPOSAL NO. 4

The Committee recommends a new Caveat be included as a preamble to Standard 25.5 to reflect the current uncertainty of the status of Oklahoma estate tax liens.

25.5 OKLAHOMA ESTATE TAX LIEN

Caveat: Generally, the Oklahoma estate tax was repealed for deaths occurring on or after January 1, 2010. No estate tax lien attaches to real property passing from the decedents dying January 1, 2010, and after, and no estate tax release is required to render such real property marketable under these title standards. 68 O.S. § 804.1

Estate tax lien obligations for decedents dying prior to January 1, 2010, remain in effect. 68 O.S. § 804.1.

The Oklahoma estate tax survives for death occurring subsequent to January 1, 2010, to the extent the Oklahoma estate tax may be imposed due to the interaction of the Oklahoma statutes and the computed Federal estate tax credit for state estate and inheritances allowable in the computation of Federal estate taxes on the Federal estate tax return 68 O.S. § 804. Pursuant to 68 O.S. § 804.1, no estate tax lien attaches to any property for deaths occurring on or after January 1, 2010.

Prior to the repeal effective January 1, 2010, Oklahoma statutes (former 68 O.S. § 815 C) provided that "no assessment of inheritance, estate or transfer tax shall be made subsequent to the lapse of ten (10) years after the date of the death of any decedent." Oklahoma Tax Commission Regulation OAC 710: 35-3-9 provides that the Oklahoma estate tax lien is extinguished upon the expiration of ten (10) years from the date of the death of the decedent unless a tax warrant is filed. However, former 68 O.S. § 815 C was repealed in its entirety effective January 1, 2010, and there appears to be no other statutory authority for the extinguishment of estate tax liens ten (10) years after death.

Upon written request, the Oklahoma Tax Commission continues to issue the ten (10) year letter which certifies that there are no unpaid assessments of Oklahoma estate or transfer taxes for a specific decedent deceased more than ten (10) years. The ten (10) year OTC letter cites the now repealed 68 O.S. § 815 as authority.

The issue is under continuing review.

PROPOSAL NO. 5

The Committee recommends an amendment to the Comment of Standard No. 30.14 to accurately reflect the operation that the Market Record Title Act may have on certain interests.

30.14 FEDERAL COURT PROCEEDINGS

.2 MARITAL INTERESTS AND MARKETABLE TITLE

A. Pre-1958: For lands under examination which are located in any of the counties located in the multi-county jurisdiction of a federal district court, there must be a federal district court certificate covering from inception of title (i.e. Sovereignty) to August 19, 1958.

B. 1958-1977: For lands under examination which are located in the same county, where the federal district court is located, there must be a federal district court certificate covering from August 20, 1958 to September 30, 1977.

C. Post 1977: For any land under examination, there is no need for a separate federal district court certification for the period after September 30, 1977.

Comment: Although the 30-year Marketable Record Title Act (16 O.S. §§ 71 to 79) may eliminate the impact of some of the matters in the federal district court arising in the earlier period of time (i.e. pre-1977), the express exceptions to the

extinguishing effect of the MRTA (e.g. “easements” and “any right, title, or interest of the United States by reason of failure to file the notice herein required”) cause such matters ~~(such as judgments)~~ to continue to impact the title in the present.

D. LATEST TES COMMITTEE AGENDA

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

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

2016 AUGUST AGENDA

(As of August 15, 2016)

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

[NOTE: IF YOU NEED A FREE PDF COPY OF THE CURRENT 2016 TES HANDBOOK, GO TO WWW.EPPERSONLAW.COM]

_____*AUGUST 20/OKC*_____

Speakers (Sub-Comm.)	Standard#	Status	Description

BUSINESS/GENERAL DISCUSSION OF CURRENT EVENTS

9:30 a.m. – 10:00 a.m.

Hot Topics: General Questions from Attorneys and Other Title Industry Members (Epperson)

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

PRESENTATIONS

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

10:00 a.m. – 10:45 a.m.

Wittrock Schomp Reed Moore Schaller	**5.1**	**Aug Draft**	***ABBREVIATED NAMES*** ***The question has arisen as to whether the standard referring to "Christian" names should be modernized to "given" names, to reflect religious diversity? (Barbara Bowersox))***

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

PRESENTATIONS (CONT'D)

11:00 a.m. – 12:00

Reed & Sullivan Bibolu Astle Keen Anthony	**?**	**Aug Draft**	***SERIES LLC*** ***The question has arisen about whether the parent or subsidiary Series LLC is the proper holder of title to real property.(David Guthery)***

Astle **Kempf** **Scott** **Keen** **Astle** **McLean** **Anthony** **Gossett** **Noble** **Wittrock**	**?**	**Aug Report**	***MISSING ASSIGNMENT OF MORTGAGE*** ***The question has been raised as to whether a mortgage could be released by the current holder of the promissory note secured by such mortgage if evidence of the promissory note with all necessary endorsements thereon, together with adequate identification of such mortgage appear of record. The application of this criteria would be limited to circumstances in which an assignment of such mortgage is missing and unobtainable.***

Astle **?**	?	**Aug Draft**	***ATTORNEY'S LIENS*** ***The question has been raised as to whether, based on the new statute detailing when an attorney's lien arises give sufficient support for an examiner to disregard an attorney's lien barred by this new statute in the absence of a recorded notice of lien in the county clerk's office?***

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

==========***APPROVED***==========

Wimbish Schaller Orlowski Gossett Keen Tack Struckle	**?**	**July APP'D**	***STRAY DEEDS*** ***The question has arisen about possibly modifying the standard to allow an examiner to ignore a stray deed in certain additional situations. (Wimbish)?***

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

Moore Holmes	**?**	**?**	***ANCIENT MORTGAGE RELEASE VALIDATED EVEN WITHOUT ASSIGNMENT*** ***The question has arisen as to whether there should be as standard created allowing a title examiner to treat a release of mortgage from an assignee as being valid, after 10 years even if there is no assignment of record.***

McEachin **Seda** Epperson Keen Evans ?? ??	**30.9** **& 30.10**		***MRTA & CO-TENANCY TERMINATION*** ***One of the comments to this standard refers to the possibility of there being two roots of title creating two marketable record titles, with each being subject to the other. The sample fact pattern is (1) decree of Blackacre to wife and two sons with decree filed 35 years ago, and (2) wife deeds Blackacre (without specifying a quantum of interest) to one of two sons, with deed filed 31 years ago. Since wife's deed is more than 30 years old, does the MRTA establish title in the grantee son, and extinguish the omitted son's claim?*** **[KRAETTLI EPPERSON HAS AN ARTICLE ON THIS TOPIC BEING PUBLISHED IN THE OBJ IN SEP. 2016--THE COMMITTEE WILL AWAIT FEEDBACK FROM THE MEMBERS OF THE BARON THIS ARTICLE BEFORE RECOMMENCING DISCUSSION OF THIS TOPIC.]**

Epperson **???**	**30.14**	**?**	***FEDERAL BANKRUPTCY COURT PROCEEDINGS*** ***In 2012 the Committee repealed 30.14 covering both Federal District Court and Bankruptcy Proceedings, and replaced it with a revised Standard covering only Federal District Court matters, but not Bankruptcy matters. We need to adopt a new Standard covering bankruptcy matters. Also need to consider whether to add a Caveat that all titles are subject to any bankruptcy filings anywhere in the country without local notice being filed.***

(Epperson & McEachin?)	**NEW**	**?**	***JUDGMENTS/DECREES & CONSTRUCTIVE NOTICE*** ***Under the MRTA, the SLTA, and under the terms of the Uniform Abstractors Certificate, do documents that are <u>not</u> filed with the County Clerk (e.g., divorce and probate proceedings) constitute constructive notice and become part of the official chain of title. Also, if a judgment or decree – affecting title to real property -- is required by statute to be placed in the county clerk's land records in order to constitute constructive notice, but has not been filed there, does the inclusion of such document in an abstract give to the examiner and the client actual notice of the same liens and ownership changes? If so, as of what date? Can you rely upon a decree as part of a chain of title, if it was never recorded in the land records?***

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

(Epperson) & McEachin?)	**30.9 & 30.10**	**?**	***MRTA/Deed as Root: All Right, Title and Interest*** ***What quantity of title is included in either a warranty or quit claim deed, using this language: "All grantor's right, title and interest" or "All my right, title and interest"? What impact, if any, does such language have on that instrument acting as a "root of title" under the MRTA? See Reed v. Whitney, 1945 OK 354 (warranty limited to interest actually owned) . If such a deed cannot be a root for the interest conveyed, how far back does the examiner need to go to ascertain what interest the grantor owns and thereby conveys? Should this Standard on the MRTA have a comment added, explaining this issue?***

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

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

==========*REJECTED*==========

Fischer Sandman	**3.5**	**Apr Rejected**	***ALTERED DOCUMENTS*** ***The question has arisen about what are the official rules governing county clerks' acceptance or rejection of "altered instruments"; contact will be made with the State Auditor and Inspector concerning learning the uniform rules being enforced, if any.***

Carson	**?**	**Mar Rejected**	***REAL PROPERTY COVER SHEET*** ***Creek County Clerk is requiring a "cover sheet" with specified information on it to be able to file anything, including same legal, parcel ID, lot split, etc. [County Clerk dropped the requirement]***

Astle McLean Anthony	**?**	**Mar Rejected**	***RELEASE OF MORTGAGE BY AFFIDAVIT*** ***The question has arisen about possibly creating a new standard to address the use of an affidavit to release a mortgage, pursuant to a new law. [merged into topic on Reliance On Release of Mortgage Without Assignment]***

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

Schaller	**NA**	**Tabled To 2017**	***LEGISLATIVE UPDATE*** ***Brief presentation concerning proposed or pending legislation affecting real property titles.***

Brown **Seda** **Schaller**	**25.5**	**Tabled to 2017**	***OKLAHOMA TAX LIEN*** ***The question has arisen as to whether there currently exist any statutory (or regulatory) authority to cause an Oklahoma Estate Tax Lien to lapse after 10 years. The prior statute which created such extinguishment has been repealed. (Brown)***
Wittrock	**???**	**Tabled to 2017**	***ACCESS TO DEATH CERTIFICATES*** ***The question has been raised as to how to overcome the current interpretation of 63§1-323 which is preventing attorneys and other third parties from getting copies of Death Certificates to file with Affidavits to Terminate Joint Tenancy, and Severed Mineral Affidavits of Heirship, and similar filings. Legislation may be necessary. Social Security Account Numbers for deceased persons are already freely available on-line, so that is not a valid reason to withhold death certificates from public access and use.***

COMMITTEE OFFICERS:

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

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

(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2016\Agenda2016 08(Aug)

2016 Title Examination Standards Committee

(Third Saturday: January through September)

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

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

Tulsa County Bar Center
1446 South Boston
Tulsa, Oklahoma 74119-3612

Stroud Conference Center
218 W Main St.
Stroud, Oklahoma 74079

Oklahoma Bar Center
1901 N. Lincoln Blvd.
Oklahoma City, OK 73152-3036

APPENDICES

1. OKLAHOMA T.E.S. COMMITTEE MEMBERS (FOR PRIOR YEAR)

2. NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER REPORT

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

APPENDIX 1

OKLAHOMA T.E.S. COMMITTEE MEMBERS (FOR PRIOR YEAR)

Last Name	First Name
Anthony	Anita
Astle	Dale
Brown	Byron (Rusty)
Bublis	Jim
Carson	Barbara
Coulson	Marilyn Olivo
Epperson	Kraettli Q.
Evans	Larry
Gossett	Bill
Grimes	Suzanne
Hand	Jeff
Johnson	Matthew L.
Keen	Ralph
Kempf	Fred
McLean	Rhonda
McEachin	Scott William
McMillin	Michael
Moore	Sarah
Newton	G. W. (Bill)
Noble	Jeff
Orlowski	Faith
Reed	Deborah
Schaller	Ryan
Schomp	Bonnie
Seda	Roberto
Shanbour	B. Michael
Sullivan	Scott
Svetlic	Joseph
Ward	Charis L.
Wimbish	Jack
Wittrock	Monica

APPENDIX 2

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER

(Effective July 17, 2015)

STATUS REPORT

State		Last Revised		Standards		
		Pre-2009	2009+	#Ch.	#Stands.	#Pgs.
1.	Arkansas	-	01-01-13	22	133	54
2.	Colorado	-	07-01-14	15	136	72
3.	Connecticut	-	01-12-09	30	151	471
4.	Florida	-	06-00-12	21	143	187
5.	Georgia	08-18-05	08-00-14	41	194	144
6.	Idaho	c. 1946	-	-	-	-
7.	Illinois	01-00-77	-	14	26	35
8.	Iowa	-	12-00-14	16	108	90
9.	Kansas	00-00-05	-	23	71	122
10.	Louisiana	00-00-01	-	25	233	99
11.	Maine	-	10-17-12	09	72	90
12.	Massachusetts	05-05-08	-	N/A	74	103
13.	Michigan	05-00-07	12-00-14	29	430	484
14.	Minnesota	-	09-27-14	N/A	97	86
15.	Mississippi	10-00-40	-	-	-	-
16.	Missouri	05-15-80	-	N/A	26	17
17.	Montana	c. 1955	-	N/A	76	78
18.	Nebraska	-	01-30-14	16	96	99
19.	New Hampshire	-	12-31-12	13	184	38
20.	New Mexico	00-00-50	-	06	23	05
21.	New York	01-30-76	-	N/A	68	16
22.	North Dakota	-	00-00-10	18	191	231
23.	Ohio	-	05-13-09	N/A	53	45
24.	Oklahoma	-	11-16-14	23	125	115
25.	Rhode Island	-	04-28-09	14	78	78
26.	South Dakota	06-21-03	-	N/A	66	58
27.	Texas	-	10-00-14	16	90	323
28.	Utah	06-18-64	-	N/A	59	13
29.	Vermont	-	09-00-14	28	52	61
30.	Washington	09-25-42	-	N/A	29	09
31.	Wisconsin	02-00-46	-	N/A	15	08
32.	Wyoming	07-01-80	-	22	81	99
Total		17	15			

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

APPENDIX 3

LIST OF THE LATEST 10 ARTICLES, AUTHORED BY KRAETTLI Q. EPPERSON (AVAILABLE ON-LINE) (Last Revised November 11, 2015)

287. **"Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2014-2015," Oklahoma Bar Association Real Property Law Section – Annual Meeting, Oklahoma City, Oklahoma (November 5, 2015)**

286. **"Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2013-2014," Boiling Springs Annual CLE, Boiling Springs Park, Oklahoma (September 15, 2015)**

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

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

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

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

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

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

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

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