

**UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY:
STATUTES, REGULATIONS, CASES, ATTORNEY GENERAL OPINIONS &
TITLE EXAMINATION STANDARDS
REVISIONS FOR 2018-2019
*(SHORTENED VERSION)***

(Covering July 1, 2018 to June 30, 2019)

BY:

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**Presented For the:
Tulsa Title and Probate Lawyers**

**At:
Tulsa, OK – March 12, 2020**

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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 AREAS:

- **Mineral/Surface Title Matters: Curative, Litigation, Expert Consultant/Witness, and Opinions**
- **Mediations and Arbitrations**
- **HOA and Condo Restrictions Interpretation and Enforcement**

SUCCESSFUL APPELLATE CASES AND SAMPLE ENGAGEMENTS:

- **Appellant Counsel: Inadequate Legal Description (Riverbend Lands, LLC v. State of Oklahoma, ex rel, Oklahoma Turnpike Authority, 2019 OK CIV APP 31)**
- **Amicus Brief: Enforcement of Ancient Probate (Bebout v. Ewell, 2017 OK 22)**
- **Expert Opinion: Reformation of Deeds (Scott v. Peters, 2016 OK 16)**
- **Secured AG Opinion: Safe Distance Between Residences and Well Sites (2009 OK AG 5)**
- **Arbitrator: Horizontal Well Damages to Vertical Wells**
- **Court-appointed Receiver for 5 Abstract Companies**
- **Arbitration Assistance: Defended Billion Dollar PSA Title Dispute**

SPECIAL ACTIVITIES:

- **OBA Title Examination Standards Committee (Chairperson: 1988-Present)**
- **Oklahoma City University School of Law adjunct professor: “Oklahoma Land Titles” (1982-Present)**
- **Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor and Contributing Author**

SELECTED PUBLICATIONS:

- **“Constructive Notice: Oklahoma’s Hybrid System Affecting Surface and Mineral Interests”, 80 OBJ 40 (January 2018)**
- **“The Oklahoma Marketable Record Title Act (aka The Re-Recording Act): An Argument That This 30-Year Curative Act Can Extinguish Co-Tenancies”, 87 OBJ 27, (October 15, 2015)**
- **“Marketable Record Title: A Deed Which Conveys Only The Grantor’s ‘Right, Title And Interest’ Can Be A ‘Root Of Title’”, 85 OBJ 1104 (May 17, 2014)**

RESPECT FOR THE COURTS

“If respect for the courts and for their judicial process is gone or steadily weakened, no law can save us as a society. Lawyers, whatever their views on controversial decisions, must inspire respect for the judiciary.”

William T. Gossett, American lawyer; president, American Bar Association Speech, Canadian Bar Association, Ottawa, September 3, 1969

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

IIA. STATUTORY CHANGES

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

2019 Final Legislative Report Oklahoma Title Examination Standards Committee 1st Session of the 57th Legislature June 8, 2019

[By: Ryan Schaller]

Section I Bills - Signed by the Governor

Effective November 1, 2019 unless an
Emergency date or other date is given

Attorney's Fees

HB 1092 by Rep. Osburn; Signed
4/15/2019; effective November 1, 2019

Amends 12 O.S. §175.1(C) to remove the cap on
Attorney's Fees awards in contested small
claims cases.

Death Certificates

HB 1175 by Rep. Perryman; signed 4/22/2019; effective November 1, 2019

Correcting Scrivener's Errors in Death Certificates. Amends 63 O.S. §1-321 to add new subparagraph (g), given here in full:

(g) If within sixty (60) days of the initial issuance of a certificate of death, a funeral director, or a person acting as such, requests a correction to any portion of the death record

except the information relating to the medical certification portion, due to a scrivener's error, misspelling or other correction of information, the Commissioner of Health, through the State Registrar of Vital Statistics, shall amend the record, provided said request is made in writing or through an electronic system and is accompanied by documentation disclosing the correct information or by a sworn statement of the funeral director. The funeral director, or person acting as such, shall be responsible for any and all amendment fees that may be

imposed by the Commissioner of Health for said correction. Up to ten certified copies containing the erroneous original information may be exchanged for certified copies containing the corrected information at no additional cost.

SB 275 by Sen. Daniels and Rep. Kannady; signed 5/2/2019; effective 11/1/2019

Creates a new law at 63 O.S. §1-315.1 establishing a procedure for obtaining a judicial determination of death after 25 years when it is determined that there is no death certificate on file with the State Department of Health. Please see statute for exact requirements and procedure for new court action.

Title to Real Property and Lack of Spousal Joinder

HB 1222 by Rep. Perryman, signed 4/22/2019; effective November 1, 2019

Amends 16 O.S. §13 to add a title curative provision for events when *a married grantor conveys nonhomestead property without spousal joinder*. Title can be cured by either a recorded affidavit by the non

joining spouse stating that the property was not homestead, or a subsequent conveyance executed by the non joining spouse.

B. In the event a recorded conveyance of nonhomestead property has been executed by a married grantor without being joined by his or her spouse, said conveyance shall still be considered a valid conveyance of marketable title if one of the following instruments is placed of record:

1. An affidavit executed by the non-joining spouse stating that the property conveyed was non-homestead property;
or

2. A conveyance executed by the nonjoining spouse, with or without others, relinquishing any claim to an interest in the property to the same grantee, or to a successor or successors in interest, with a recitation that the property was nonhomestead property.

Surplus Lands from State DOT Takings

HB 1330 by Rep. Johns; signed April 25, 2019; effective November 1, 2019

Amends 69 O.S. §1001 D.2. Under certain circumstances, when the Department of Transportation takes land and ends up not using it all, the adjoining landowner has right of first refusal to purchase the surplus property. One requirement is that the land be less than one acre. This bill increased that to less than 3 acres.

Abstractors' Board

HB 1434 by Rep. Gann; signed 4/15/2019

Extends the sunset date of the Oklahoma Abstractors' Board by 1 year. This was originally supposed to be for 6 years. We'll see what happens when they go to renew the board next year.

Wind Turbine Setbacks and Setback Disputes

HB 2118 by Reps. McBride, Miller, Moore, Caldwell (Chad), Davis, Luttrell, and Sens. Stanislawski and Bergstrom; signed 5/7/2019; effective **IMMEDIATELY** (passed with Emergency language)

Makes extensive changes to 17 O.S. §60.20. Too many changes to copy here and outside of my scope to confidently explain. Please review the bill if this interests you.

Unclaimed Property Fund

HB 2121 by Rep. Ortega and Sen. Howard; signed 4/25/2019; effective 11/1/2019

Amends 60 O.S. §667 to add notice by publication when auctioning unclaimed safety deposit boxes, and amends §668 to authorize the State Treasurer to use the unclaimed property fund to pay attorneys fees in related actions.

Petroleum Storage Tank Consolidation Act

HB 2151 by Rep. Pfeiffer and Sen. Rader;
signed 4/18/2019; effective 11/1/2019

40 pages of what appear to be one or two word changes, or changes to cross reference in various Title 17 statutes on underground petroleum storage tanks.

County Clerk Language Change

SB 3 by Sen. Rosino and Rep. Kannady;
signed 4/15/2019; effective 11/1/2019

Amends 19 O.S. §245 B no change the word “page” to “image” when discussing the cost per “image” of copies in the office of the County Clerk.

County Clerk Fee Increase

SB 442 by Sen. Haste and Reps. Humphrey and Roberts (Dustin); signed 4/16/2019; effective 11/1/2019

Amends 28 O.S. §32(C) to increase the preservation fee for each document filed with the County Clerk from \$5.00 to now \$10.00.

Real Estate Commission: Prizes and Gifts

SB 104 by Sen. Rosino and Rep. Davis, signed 4/16/2019; effective 11/1/2019

Amends 59 O.S. §858-312 (Actions subject to sanction by the Real Estate Commission) by changing the language related to prizes and gifts as follows:

Old 12. Soliciting, selling, or offering for real estate by offering “free lots”, conducting lotteries or contests, or offering prizes for the

purpose of influencing a purchaser or prospective purchaser of real estate.

New 12. Using prizes, money, gifts or other valuable consideration as an inducement to secure customers or clients to purchase specific property; however, licenses may use prizes, money, gifts or other valuable consideration for marketing purposes provided they are not contingent or limited to individuals making an offer or purchasing a specific property.

Fire Prevention District Change

SB 164 by Sen. Pederson, and Reps Mize, Miller, and Martinez, signed 4/29/2019; effective 11/1/2019

Amends 19 O.S. §901.22 concerning adding additional lands to a Fire Prevention District, and amends 19 O.S. §901.5 concerning the make up of the Board of Directors of Fire Prevention Districts, Sheriff's Sales and Real Estate Appraisals/Appraisers

Real Estate and Sheriff's Sale Appraisals

SB 346 by Sen. Bice and Rep. McCall, signed 4/29/2019; effective 11/1/2019

Amends 12 O.S. §759 to allow for sheriff sale's appraisal to be done by a legal entity based on "at least three independent, credible sources, each of which has estimated the real value of the subject property independently." The entity will also provide a written affidavit of impartiality (does not say who signs this or what's in it).

SB 737 by Sen Leewright and Rep. Newton,
signed 4/29/2019; effective 11/1/2019

Amends 18 O.S. §803(A)(6) to add the
following to the list of Professional Services
covered by the Professional Entity Act:

“aa. A certified real estate appraiser licensed
pursuant to Sections 858-700 through 858-732
of Title 59 of the Oklahoma Statutes or listed on
the National Registry of Appraisers by the
Appraisal Subcommittee in compliance with XI

of the Financial Institutes Reform, Recovery, and Enforcement Act (FIRREA) of 1989, and any subsequent laws regulating the practice of real estate appraisal”

Military Members and Spouses - Transferable State Licenses

SB 670 by Sen Pugh and Rep. McCall, signed 4/30/2019; effective 11/1/2019

Creates new law in 59 O.S. §4100.8 that allows for administrative bodies with authority over professional licenses to authorize transfer or reciprocity of the license in another state of military member or the military member's spouse, moving to Oklahoma pursuant to a military transfer order or honorable discharge to this state. This

would be in lieu of whatever current procedures are used for accepting or honoring professional licenses or accreditation in other states. Doesn't list out what professions or licenses it's intended to apply to.

Corporation Commission - Telecommunications

SB 831 by Sen Paxton and Rep. Boles,
signed 4/23/2019; effective 11/1/2019

Amends 17 O.S. §131 to change the notice requirements for a Telecommunications Certificate of Convenience and Necessity with the Corporate Commission.

Remote Online Notaries

SB 915 by Sen. Rosino and Rep. Kannady, signed 5/9/2019; effective 1/1/2020

This bill does two things:

1. Creates a new law at 16 O.S. §67 that allows for any notary to use the new notary certificate provided by the law, to certify that a printed document is an exact copy of an original document that only exists electronically. This will allow for the recording of documents that are “natively electronic”.

2. Creates a new law at 49 O.S. §201 et. Seq. called the “Remote Online Notary Act”. This will require notaries to receive an additional certification. The statute provides some information about procedures and record storage, but the law empowers the OK Secretary of State to promulgate rules and regulations covering many of the specifics about how this will work. Those rules have not been published at the time of this report, but the author has heard from a number of people that the Secretary’s office is being proactive about this.

Remote Notarization under this statute involves a licensed notary physically located in Oklahoma, who uses some type of video chat (a standard to be set by Sec of State) to watch a person located remotely (in the state or outside) execute a document and then notarizes the signature. Oklahoma's law was based on the model legislation created jointly by the American Land Title Association and a National Banking group.

Water Law Language Change

SB 998 by Sen. Murdock and Rep. Patzkowsky, signed 5/29/2019; effective 11/1/2019

Amends 82 O.S. §1020.15 to remove the word “fresh” where it appears before “groundwater”. So instead of covering “fresh groundwater”, the statute now covers “groundwater”.

Add new law at 82 O.S. §1021.1 stating that the taking and use of “marginal water” in accordance with the OWRB rules on Groundwater.

OKLAHOMA COURT OF CIVIL APPEALS:
JULY 1, 2018 – JUNE 30, 2019

B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2018 - JUNE 30, 2019)

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
B. OKLAHOMA COURT OF CIVIL APPEALS					
1	Easement Use	Appurtenant Easement vs. Easement in Gross, and Reasonable Use	TSG Tulsa Retail, L.L.C. v. Indep. School Dist. #9 of Tulsa Cty.	2018 CIV APP 52	4/20/2018
					7/18/2018
2	Joint Tenancy	Severance as to Some, But Not All Joint Tenants	Goodson v. McCrory	2018 OK CIV APP 59	8/29/2018
					9/26/2018
3	Durable Power of Attorney	Attorney in Fact Loses Authority When He Learns His Power of Attorney is Revoked	Hold v. Bentley	2018 OK CIV APP 62	4/13/2018
					10/17/2018
4	Probate Venue	Filing Probate in Venue Other Than County of Residence	In the Matter of the Estate of Walker	2018 OK CIV APP 63	9/18/2018
					10/17/2018

B. OKLAHOMA COURT OF CIVIL APPEALS CASES**(JULY 1, 2018 - JUNE 30, 2019)**

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
B. OKLAHOMA COURT OF CIVIL APPEALS					
5	Foreign Judgment	Vacating Foreign Judgment Effecting Oklahoma Land	Herring v. Graham	2019 OK CIV APP 1	12/7/2018
					1/9/2019
6	Non-Profit School Status	Welding School was Tax Exempt Property	In the Matter of the Assessment for Tax Year 2012 of Certain Real Properties	2019 OK CIV APP 2	4/6/2018
					1/16/2019
7	OTA Tax Lien	Frivolous Assertion of OTC Tax Warrant	Wells Fargo Bank v. Lam	2019 OK CIV APP 9	12/7/2018
					2/13/2019
8	Adverse Possession	Elements of Adverse Possession Against a Co-Tenant	Hodge v. Wright	2019 OK CIV APP 10	1/16/2019
					2/13/2019

B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2018 - JUNE 30, 2019)

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
9	Judgment Dormancy	Bankruptcy Does Not Toll Dormancy Statute Because Notice of Renewal Is Not Barred	Automotive Finance Corporation v. Rogers	2019 OK CIV APP 16	3/1/2019
					3/27/2019
10	Mining Permit	Notice Requirements for Non-Coal Mining Permit	Citizens for the Protection of the Arbuckle-Simpson Aquifer v. Okla. Dept. of Mines	2019 OK CIV APP 17	7/26/2018
					3/27/2019

B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2018 - JUNE 30, 2019)
LIST OF CASES

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
11	County Land Records	Access to Electronic Copy of County Land Records (Not Index)	Texasfile, LLC v. Boevers	2019 OK CIV APP 20	8/29/2018
					3/27/2019
12	Mechanics Lien	Temporary Laborer Providers Does Not “Perform” Labor & Is Not a “Sub-Contractor”	Advanced Resource Solutions, LLC v. Stava Building Corporation	2019 OK CIV APP 28	4/15/2019
					5/15/2019

B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2018 - JUNE 30, 2019)
LIST OF CASES

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
13	Constructive Notice	Legal Description is Needed for Constructive Notice	Riverbend Land v. State ex rel. Oklahoma Turnpike Authority	2019 OK CIV APP 31	8/10/2018
					6/19/2019
14	Lien Priority	HOA Lien Junior to Mortgage Lien	CIT Bank, N.A. v. Heirs of McGee	2019 OK CIV APP 36	6/5/2019
					7/3/2019

VI. TITLE EXAMINATION **STANDARDS CHANGES**

2019 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2020, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 9, 2018. 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

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 8, 2019. 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.

[APPROVED BY HOUSE OF DELEGATES: NOV. 8, 2019]

PROPOSAL NO. 1

The Committee proposes to add new to Standard 23.11, in order to reflect results in the holdings of Taracorp v. Dailey, 2018 OK 32, and Automotive Finance Corporation v. Rogers, 2019 OK CIV APP 16 as to foreign money judgments.

23.11 FOREIGN MONEY JUDGMENTS AND LIENS.

A. Foreign Money Judgments. An authenticated copy of a money judgment rendered by a court of the United States, or by any other court entitled to full faith and credit in Oklahoma, may be filed in the

district court clerk's office in any county in Oklahoma. Such money judgment shall have the same effect as a money judgment of a district court in Oklahoma, subject to the provisions regarding notice and possible stay outlined in the Uniform Enforcement of Foreign Judgments Act, Title 12 O.S. §719, et seq.

B. Lien Created Pursuant to a Foreign Money Judgment. A judgment lien, pursuant to a properly-filed foreign money judgment, can be created by compliance with the provisions of Title 12 O.S. §706.

Comment:

It should be noted that a foreign money judgment can be filed in Oklahoma, as outlined above, at any time during the period in which the original judgment or any renewal of the original judgment is enforceable pursuant to the laws of the state of origin for such judgment.

Authority:

Taracorp v. Dailey, 2018 OK 32

Automotive Finance Corporation v. Rogers, 2019 OK CIV APP 16

Note:

See Title Examination Standard 35.4 regarding the lack of authority of a foreign state court to establish or convey title to Oklahoma real property.

PROPOSAL NO. 2

The Committee recommends Comment 3 to Standard 17.4 be amended as follows to clarify the intent of the comment and the Title Examination Standards Sub-Committee and to add Comment 10 to clarify no additional instruments are required after a transfer on death deed has been revoked.

17.4 TRANSFER-ON-DEATH DEEDS

Comment 3: The examiner should be aware that the grantor's interest is subject to the homestead rights of a surviving spouse pursuant to Article 12 Section 2 of the Oklahoma Constitution. The examiner should be provided with satisfactory evidence which must be recorded, such as an affidavit as to marital status or death certificate of the grantor showing no surviving spouse. If the evidence provided to the examiner reveals that the grantor had a spouse at the time of death, and the surviving spouse did not execute the Transfer on Death Deed under examination,

the examiner shall require a quit claim deed from the surviving spouse, showing marital status and joined by spouse, if any.

Comment 10: If the Grantor of a TOD deed revokes the TOD deed, no further instrument is required to terminate the potential interest of the Grantee of the revoked TOD deed. A TOD deed can be revoked by recording in the land records of the County where TOD deed is recorded any one of the following executed by the Grantor of the TOD deed:

(i) an instrument specifically revoking the TOD deed,

(ii) a subsequently executed TOD deed covering the real property described in the original TOD deed, or

(iii) a subsequent deed which immediately vests in the grantee of the deed the title to the real property described in the TOD deed.

Authority: 58 O.S. §§ 1252A, 1254 A and B and 1257.

PROPOSAL NO. 3

The Committee recommends Standard 14.10 be amended as follows to add a new sub-paragraph “A” and a new “Comment 1”, and to renumber the previous sub-paragraphs and Comments, to clarify

the ownership in a Series LLC during various time periods.

14.10 LIMITED LIABILITY COMPANY WITH SERIES

A. PRIOR TO NOVEMBER 1, 2004: A properly created or domesticated LLC could not establish Series.

A.B. Prior to November 1, 2017, BEGINNING NOVEMBER 1, 2004 THROUGH OCTOBER 31, 2017: Title ~~title~~ to real property which is to be held under a properly created LLC ~~limited liability company~~ with established Series ~~series~~, domestic or foreign, must

be acquired, held and conveyed in the name of the ~~limited liability company~~ LLC, with appropriate indication that such title is held for the benefit to the specific series.

BC. Beginning November 1, 2017, unless
BEGINNING NOVEMBER 1, 2017: Unless otherwise
provided in the operating agreement, a Series ~~series~~ established in accordance with subsection B of 18 O.S. §2054.4 (with the exception of the business of a domestic insurer) shall have the power and capacity to, in its own name, hold title to assets including real property.

Comment 1: Prior to November 1, 2017, if a conveyance has been made to a Series; the examiner should require a corrective conveyance from the original grantor.

Comment 2: ~~Prior to November 1, 2017,~~ Beginning November 1, 2004 through October 31, 2017, because a series is merely an attribute of the LLC, the series ~~may~~ could not hold ~~title~~ real property in its own name independent of the LLC. Examples of acceptable designations of the grantor or grantee in ~~an instrument conveying title to real property to or from a particular series~~ a conveyance

to or from and LLC for a Series would be one of the following:

- A) Master, LLC, an Oklahoma limited liability company, as Nominee for its Series ABC;
- B) XYZ, LLC, a Texas limited liability company, on behalf of its Series ABC;
- C) DEF, LLC, a Delaware limited liability company, for the benefit of its Series 2016-A.

~~In the event an LLC, which was merely provided for the establishment of series, acquires property prior to the actual establishment of such series or otherwise~~

~~acquires property in the name of the LLC, the LLC shall evidence such transfer to interest from the LLC itself to the LLC for the benefit of the series, by appropriate conveyance.~~

Comment 3: Beginning November 1, 2004, if an LLC, prior to the establishment of a Series acquired property, the LLC shall convey to:

- A) The LLC for the benefit of the Series; or
- B) The Series (on or after November 1, 2017).

Comment 2 4: Beginning November 1, 2017, to ensure the Series ~~has not been~~ is not prohibited from holding title to real property in its own name, ~~title the~~ examiner may rely upon ~~an~~ a properly recorded affidavit of the LLC Manager ~~properly recorded in the~~ land records of the county where the real property is ~~located,~~ stating the Series at the time it acquired title to the real property, had the power and capacity to hold ~~title to real estate~~ real property.

Comment 5: This Standard does not address the situation of real property held by a wholly owned subsidiary LLC, which is an entity capable of acquiring,

holding and conveying real property in its own name.

PROPOSAL NO. 4

The Committee recommends Standard 7.2 be amended as follows to add a new sub-paragraph “D” and to revise the Comments to reflect the amendment of 16 O.S. §13.

C. The grantee is the spouse of the individual grantor and that fact is recited by the grantor in the body of the instrument-; or

D. In the event a recorded conveyance of nonhomestead property has been executed by a married grantor without being joined by his or her spouse, said conveyance shall be marketable if one of the following instruments is placed of record:

1. An affidavit executed by the nonjoining spouse stating that the property conveyed was nonhomestead property; or

2. A conveyance executed by the nonjoining spouse, with or without others, relinquishing any claim to an interest in the property to the same grantee, or to a successor or successors in interest,

with a recitation that the property was nonhomestead property.

Comment 1: There is no question that an instrument relating to the homestead is void unless both spouses subscribe it. *Grenard v. McMahan*, 1968 OK 75, 441 P.2d 950, *Atkinson v. Barr*, 1967 OK 103, 428 P.2d 316, but also see *Hill v. Discover Bank*, 2008 OK CIV APP 111, 213 P.3d 835. It is also settled that both spouses must execute the same instrument, as separately executed instruments will be void. *Thomas v. James*, 1921 OK 414, 202 P. 499. It is essential to make the distinction between valid conveyance and a

conveyance vesting marketable title when consulting this standard. This distinction is important because the impossibility of determining from the record whether or not the land is homestead, requires the examiner, for marketable title purposes, or (1) assume that all real property is homestead, and (2) consequently, always require joinder of both spouses on all conveyances. ~~Although a~~ A deed of non-homestead real property, signed by a title-holding married person without the joinder of their spouse, will be valid as between the parties to the deed, ~~it cannot confer marketable record title.~~ and can confer marketable title upon the satisfaction of Sub-Part (D) above.

Comment 2: While 16 O.S. §13 states that “The husband and wife may convey, mortgage or make any contract relating to any real estate, other than the homestead, belonging to him or her, as the case may be, without being joined by the other in such conveyance, mortgage or contract,” joinder by both spouses must be required in all cases due to the impossibility of ascertaining from the record whether the property was or was not homestead or whether the transaction is one of those specifically permitted by statute. See 16 O.S. §§4 and 6 and Okla. Const. Art. XII §2. A well-settled point, prior to amendment of 16 O.S. §13, effective November 1, 2019, was is that one

may not rely upon recitations, either in the instrument or in a separate affidavit, to the effect that property was not the homestead. Such recitation by the grantor may be strong evidence when the issue is litigated, but it cannot be relied upon for the purpose of establishing marketability. *Hensley v. Fletcher*, 172 Okla. 19, 44 P.2d 63 (1935). However, the 2019 amendment authorized the use of affidavits and conveyances, executed by the nonjoining spouse and placed of record within ten (10) years of the filing of a conveyance described in 16 O.S. §13(B), to evidence the property was not homestead and establish marketability.

PROPOSAL NO. 5

The Committee recommends Standard 34.2 be amended as follows to correct references and time limits.

A. Exempt Assets

...

E. Judgment Liens in Bankruptcy

...

5. For the title to real property passing through bankruptcy proceedings to be free and clear of a