

## 2021 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

*Proposed Amendments to Title Standards for 2022, to be presented for approval by the House of Delegates, Oklahoma Bar Association prior to or at the 2021 OBA Annual Meeting. Additions are underlined, deletions are indicated by ~~strikeout~~. Formatting requests that are not to be printed are contained within {curly brackets}.*

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 prior to or at its annual meeting in 2021.

Proposals approved by the Section will be presented to the House of Delegates prior to or at the 2021 OBA Annual Meeting. 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 recommends a new Standard 3.2.1 be included to assist title examiners with the application of an affidavit of heirship regarding severed mineral interests.*

#### 3.2.1 ACQUIRING SEVERED MINERAL INTERESTS FROM DECEDENT – ESTABLISHING MARKETABLE TITLE

In part, 16 O.S. § 67 provides that a person who claims a severed mineral interest, through an affidavit of death and heirship recorded pursuant to 16 O.S. §§ 82 and 83, shall not acquire marketable title until ten (10) years after the recording of an affidavit that satisfies Part C of Section 67.

Authority: 16 O.S. §§ 53, 67, 82, and 83.

Comment 1: The term “severed mineral interest” is not defined in the Simplification of Land Titles Act although it is in the Marketable Record Title Act. Thus, while the statute explicitly states that it applies to a severed mineral interest, its application to leasehold interests (i.e. working interest, overriding royalty interests, etc.) has not been determined.

Comment 2: 16 O.S. §§ 82 and 83 provide that such an affidavit creates a rebuttable presumption that the facts stated in the recorded affidavit are true as they relate to the severed minerals.

Comment 3: Pursuant to 16 O.S. §§ 67, 82 and 83, the affidavit must contain sufficient factual information to make a proper determination of heirship. Such factual information typically includes the date of death of the decedent, a copy of the death certificate, marital history of the decedent, names and dates of death of all spouses, a listing of all children of the decedent including any adopted children, identity of the other parent of all children of the decedent, the date of death of any deceased children and the identity of the deceased child’s spouse and issue, if any. Pursuant to 16 O.S. §§ 84, the affidavit shall include the legal description of the land covered by the affidavit. If an affidavit fails to include factual information necessary to make a proper determination of heirship, the examiner should call for a new affidavit that contains the additional facts necessary for a proper determination of heirship. If a new or corrected affidavit is filed, the statutory 10-year period would run from the date of recordation of the new or corrected affidavit.

Comment 4: Title 16 O.S. § 67 does not address the effect on title of an unprobated will attached to the affidavit. Oklahoma cases have held that until a will is admitted to probate, it is wholly ineffectual to pass title to real property, including any mineral or leasehold interest, and a devisee has no right to enforce any provisions of said will. Oklahoma cases have also held that there is no time limit within which a petition for probate of a will must or can be filed. A will that has been probated in another jurisdiction but has not been probated in Oklahoma is ineffective to establish any interest or title in the persons claiming thereunder without proper Oklahoma proceedings. As a result, there is uncertainty regarding the legal effect of the attached will.

## **Proposal No. 2.**

*The Committee recommends a new Standard 6.9 be included to assist title examiners with the application of new legislation regarding Remote Online Notaries.*

### **6.9 REMOTE ONLINE NOTARIES AND RECORDING OF ELECTRONIC DOCUMENTS IN TANGIBLE FORM**

#### **A. Remote Online Notarization**

Beginning January 1, 2020, Oklahoma law recognizes remote online notarizations performed by an Oklahoma Remote Online Notary. 49 O.S. §211 provides that a remote online notarization done pursuant to the requirements of the law of Oklahoma shall satisfy any requirement of law that requires a principal appear before, appear personally before, or be in the physical presence of a notary public at the time of the performance of the notarial act.

Anytime a notarial acknowledgment is required under these Standards, an acknowledgment by an Oklahoma Remote Online Notary shall be deemed to satisfy the requirement if the Remote Online Notarization is completed in compliance with 49 O.S. §211.

Although the language of Oklahoma’s statute purports that a Remote Online Notarization satisfies any requirement of law of this state that the principal appear before a notary public, the execution of wills and testamentary trusts and transactions under the Uniform Commercial Code are specifically excluded from the Uniform Electronic Transactions Act adopted by the state of Oklahoma.

Comment: The certificate of notarial act for a remote online notarization shall indicate that the notarial act was a remote online notarial act performed by means of communication technology. The Oklahoma Administrative Code provides the following example language for the acknowledgment of an individual by a remote online notary: “This record was acknowledged before me by means of communication technology on (date) by (name(s) of person(s)).”

Authority: 49 O.S. §§201-214; 12A O.S. §15-103; Okla. Admin. Code § 655:25 Appendix A

#### **B. Recording Electronic Documents in Tangible Form**

Beginning January 1, 2020, Oklahoma law recognizes the recordation of electronic documents in tangible form. Pursuant to 16 O.S. §87, an electronic document is a document that is created, generated, sent, communicated, received, or stored by electronic means.

As used in these Standards, the word “document” should be interpreted to include electronic documents recorded in tangible form.

Pursuant to 16 O.S. §87 (B), an electronic document in paper form certified to by an Oklahoma notary public will satisfy any statutory recording requirement that the document:

1. be an original or be in writing;
2. be signed or contain an original signature if the document contains an electronic signature of the person required to sign the document; and
3. be notarized, acknowledged, verified, witnessed or made under oath, if the document contains an electronic signature of the person authorized to perform that act, and all other information required to be included.

Authority: 16 O.S. §87

Comment: No additional notarial certification is required under Oklahoma law to make the above described certification of an electronic document in tangible form.

Caveat: This statute does not apply to a plat, plan, map, or survey of real property, or other instruments with format and medium restrictions.

### **Proposal No. 3.**

*The Committee recommends the following editorial changes to the Title Standards as they appear on OSCN to bring the printed handbook and OSCN into conformity.*

#### 13.1 CONVEYANCES TO AND BY PARTNERSHIPS

....

Authority: 54 O.S. §§ 1-201 (for all general partnership conveyances after January 1, 2000) and § 307 (for limited partnerships).

#### 13.5 NO MARITAL RIGHTS IN PARTNERSHIP REAL PROPERTY

No homestead or other marital rights attach to the interest of a married partner in specific partnership real property. If, by recitals in instruments in the chain of title or otherwise, it appears that partnership real property was conveyed, the title examiner should not require any evidence of release or non-existence of such marital rights.

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#### 13.6 ASSETS OF PARTNERSHIP NOT SUBJECT TO EXECUTION FOR DEBTS OF INDIVIDUAL PARTNERS

Specific partnership property is not subject to execution on a claim, judgment or lien against a partner of the partnership. A partner in a general partnership formed prior to November 1, 1997, is a co-owner with the other partners of specific partnership property, holding as a tenant in partnership. Commencing January 1, 2000, the concept of tenancy in partnership will not define the nature of the partners' ownership interests. {new paragraph} A partner's right to possess property is equal with that of the other partners and one (1) partner has no right to possess such property for any other purpose, except with the consent of other partners. A partner's right in specific partnership property is not assignable except in connection with the assignment of all rights of all partners in the same property.

#### 13.7 CONVEYANCES TO AND BY JOINT VENTURES

A. ....

Comment: Subsection "A" reinstates the essential text of Subsections "A" and "B" under former ~~model~~ Standard 10.8, which was repealed in 1996 following the amendment to 16 O.S. § 1. The earlier text remains applicable to conveyance mortgage or other real estate instruments in the chain of title prior to November 1, 1995.

....  
C. ....

....

An instrument to "A and B, members of XYZ joint venture," does not give notice of the existence of other members because a joint venture can be two people. An instrument to A, "a member of XYZ joint venture," is notice because one person alone cannot be a joint venture. Similarly an instrument to "A and B, some members of XYZ joint venture," is notice of the existence of at least one other joint venturer.

- D. With respect to a conveyance, mortgage or other real estate instrument executed from and after November 1, 1995, in which title of record appears in the name of a described joint venture, the title examiner is entitled to rely, by analogy, on the concepts embodied in Title Examination Standard 13.3 (relating to conveyances of real property held in the name of a partnership) and in Title Examination Standard 13.4 (relating to the authority of one general partner to act for all partners).

....

Comments: Prior Oklahoma case law follows a common law rule that one joint venturer may bind the other venturer(s) in matters within the scope of the business. Thus, the mutual agency concepts associated with partnership law are applicable. There is specific Oklahoma authority that members of a joint venture have the powers and interests of partners in the disposition of real property held in the name of the joint venture. See *Dobbins v. Texas Co.*, *supra*, 275 P. at 648. Thus, if no limitation on the power to sell or encumber real property appears of record, a conveyance instrument made by any one or more venturers in good faith and in the due course of the enterprise, binds all the co-venturers.

§13.8. Recital of Identity, Successorship or Consolidation.

Unless there is some reason disclosed of record to doubt the truth of the recital (e.g., the recordation of a conflicting certificate prepared pursuant to 54 O.S. § 310.1), after September 1, 1990, but prior to November 1, 1997, a recital of name change or recital of succession by merger or consolidation of one or more domestic limited partnerships with one or more other domestic limited partnerships or other business entities may be relied upon if contained in a recorded title document properly executed by the successor or resulting entity. "Other business entity" is defined as a corporation, a business trust, a common law trust or an unincorporated business including a partnership, whether general or limited. From and after November 1, 1997, the identification of succession through merger must be evidenced of record by a Statement of Merger, duly certified by the Oklahoma Secretary of State and filed of record with the county clerk in the county in which the partnership real property is located. The Statement of Merger must include the content required under 54 O.S. § 1-907.

Authority: 54 O.S. §§ 1-907 and 310.1; 18 O.S. § 1090.2 and § 2054.

§14.3. Authority of Manager to Act for Limited Liability Company.

The examiner, in the absence of evidence to the contrary, may presume that a manager of a limited liability company was authorized to act on behalf of the company if the manager executes and acknowledges in proper form a recorded instrument for apparently carrying on the business of the limited liability company.

Comment<sub>1</sub>: The Oklahoma Limited Liability Company Act as enacted on September 1, 1992, authorized the Articles of Organization to include a statement of restrictions on the authority of the manager. This provision was deleted by 1993 Okla. Sess. Laws, ch. 366, § 3, eff. September 1, 1993. The Committee was unable to reach a consensus whether the filing of the Articles of Organization with such restrictions constitutes constructive notice of the restrictions on the authority of the manager. If a recorded instrument is executed by a domestic limited liability company before September 1, 1993, the examiner should consider whether it is necessary to review a copy of the Articles of Organization filed with the Secretary of State to determine whether these articles contain a statement of restrictions on the authority of the manager.

Comment<sub>2</sub>: An instrument executed on behalf of a limited liability company in which the signatory party is identified as a "Manager and Member," "Member Manager" or "Managing Member" is to be considered as satisfying the provisions of 18 O.S. §2015-(A)-(3).

§14.3.1 Delegation of Manager's Authority.

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Authority: ~~Title~~ 18 O.S. Sections 2013 & 2016

....

{Editor's note to OSCN: The "next section" and "previous section" functions skip this standard. For example, in standard 14.3, "next section" takes you to 14.4 instead of 14.3.1.}

§ 14.9 Recital of Identity, Successorship or Consolidation

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Comment: While there seems to be no exact precedent for this Standard, it is justified as a parallel to Standards 5.3, 12.4, 13.8 and as an extension of Standard 12.1.

§ 14.10 Limited Liability Company with Series

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

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Authority: 18 O.S. §2054.4.B. and 2054.4.C.

#### Proposal No. 4.

*The Committee recommends the following editorial changes to the Title Standards as they appear in the handbook to bring the printed handbook and OSCN into conformity.*

#### 13.1 CONVEYANCES TO AND BY PARTNERSHIPS

....

Authority: ~~16 O.S. § 1.~~ 54 O.S. § 1-201 (for all general partnership conveyances after January 1, 2000) and § 307 (for limited partnerships).

#### 13.2 IDENTITY OF PARTNERS

The examiner may rely without further inquiry on the presumption that individuals executing conveyances of partnership-owned real property:

- A. As partners of a general partnership, including a fictitious name partnership; or
- B. As general partners of a limited partnership, ~~were in fact such members of the partnership on the date of execution, in the absence of recorded evidence or knowledge of facts to the contrary.~~

were in fact such members of the partnership on the date of execution, in the absence of recorded evidence or knowledge of facts to the contrary.

**Authority:** 54 O.S. § 307; 16 O.S. §§ 1, 52 and 53(a)(7).

**Comment:** Section 1-303(a) of the Oklahoma Revised Uniform Partnership Act, effective November 1, 1997, permits the filing of Statements of Partnership Authority with the office of the Secretary of State of the State of Oklahoma, with a certified copy thereof being filed in the office of the county clerk in the counties in which partnership real property is to be conveyed. A Statement of Partnership Authority (duly certified by the Oklahoma Secretary of State), if filed and recorded, must include the identity of partners authorized to execute instruments transferring real property, ~~and~~ record title to which is vested in the partnership by name. Although the filing of a Statement of Partnership Authority is optional, a statement of the authority to convey will be conclusive (and not merely a presumption) in favor of a transferee for value without knowledge to the contrary [Section 1-303(d)]. A Statement of Partnership Authority applies not only to general partnerships formed after November 1, 1997, but also from and after January 1, 2000, to previously formed general partnerships.

#### 13.3 CONVEYANCE OF REAL PROPERTY HELD IN PARTNERSHIP NAME

Real property acquired by a partnership and held in the partnership name may be conveyed only in the partnership name. Any conveyance from the partnership so made, and signed by one or more members of the partnership, which conveyance appears to be executed in the usual course of partnership business, shall be presumed to be authorized by the partnership, in the absence of knowledge of facts indicating a lack of authority, and the recitals in the instrument of conveyance shall be accepted as sufficient evidence of such authority. The lack of ~~the~~ requisite authority may appear in a Statement of Partnership Authority duly certified by the Oklahoma Secretary of State and recorded in the land records in the county in which the partnership property is located and which contains limitations on the authority of individual partners.

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Comment: Jane Jones and Robert Smith are partners, doing a real estate business in the name of Enterprise Associates. Real estate is purchased for the partnership and title is taken in the name of Enterprise Associates, a partnership. The partnership wishes to sell the land to Henry Green. The deed should be executed in the name of Enterprise Associates, a partnership. It may be signed by one or both of the partners. Thus, the signature can read: "Enterprise Associates, a partnership, consisting of Jane Jones and Robert Smith, by Jane Jones and Robert Smith," or "Enterprise Associates, a partnership, by Jane Jones." If the latter form of execution is used, the deed should show, by its recitals, or evidence should be secured to show, that Jane Jones is one of the partners. The purchaser should have no knowledge negating the presumption that Jane Jones was acting with authority of the partnership. If the deed should read "Enterprise Associates, a partnership, by Jane Jones, one of the partners," it should be passed by the title examiner in the absence of any knowledge of lack of authority on the part of Jones.

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#### 13.4 AUTHORITY OF ONE PARTNER TO ACT FOR ALL

When real property is held by a partnership, and a conveyance is made on behalf of the partnership by one or more, but less than all, of the partners, and the conveyance appears to be executed in the usual course of partnership business, it is presumed, in the absence of evidence to the contrary, that the conveyance was made by the partner or partners executing it for the purpose of carrying on in the usual way the business of the partnership; and no further evidence of authority of such partner or partners to execute the instrument should be required by the title examiner. If the partner or partners executing the instrument are shown to have the requisite authority in a Statement of Partnership Authority duly certified by the Oklahoma Secretary of State and recorded in the real estate records in the county in which the partnership property is located, the conveyance is conclusive as to transferees with no knowledge of any limitation to the contrary.

**Authority:** Crane, Handbook on the Law of Partnership § 49 (2d ed. 1952); 54 O.S. §§ 1-301, 1-302, and 1-303.

#### 13.6 ASSETS OF PARTNERSHIP NOT SUBJECT TO EXECUTION FOR DEBTS OF INDIVIDUAL PARTNERS

....

A partner's right to possess property is equal with that of the other partners and one ~~(1)~~ partner has no right to possess such property for any other purpose, except with the consent of other partners. A partner's right in specific partnership property is not assignable except in connection with the assignment of all rights of all partners in the same property.

#### 13.7 CONVEYANCES TO AND BY JOINT VENTURES

A. ....

Comment: Subsection "A" reinstates the essential text of Subsections "A" and "B" under former model Standard 10.8, which was repealed in 1996 following the amendment to 16 O.S. § 1. The earlier text remains applicable to conveyances, mortgages, or other real estate instruments in the chain of title prior to November 1, 1995.

C. ....

Comment: Real property or an interest therein acquired prior to November 1, 1995, in furtherance of a joint venture is owned by all joint venturers with each owning an undivided interest equal to such venturer's undivided interest in the joint venture. If title is acquired in the name of one or more, but less than all, of the members of the joint venture, the remaining members have an equitable interest in the property.

....

An instrument to "A and B, members of XYZ joint venture," does not give notice of the existence of other members because a joint venture can be two ~~(2)~~ people. An instrument to A, "a member of XYZ joint venture," is notice because one ~~(1)~~ person alone cannot be a joint venture. Similarly an instrument to "A and B, some members of XYZ joint venture," is notice of the existence of at least one ~~(1)~~ other joint venturer.

D. ....

**Comment:** Prior Oklahoma case law follows a common law rule that one ~~(1)~~ joint venturer may bind the other venturer(s) in matters within the scope of the business. Thus, the mutual agency concepts associated with partnership law are applicable. There is specific Oklahoma authority that members of a joint venture have the powers and interests of partners in the disposition of real property held in the name of the joint venture. See *Dobbins v. Texas Co.*, *supra*, 275 P. at 648. Thus, if no limitation on the power to sell or encumber real property appears of record, a conveyance instrument made by any one or more of the venturers in good faith and in the due course of the enterprise, binds all the co-venturers.

#### §14.3. Authority of Manager to Act for Limited Liability Company.

....

Comment 2: An instrument executed on behalf of a limited liability company in which the signatory party is identified as a "Manager and Member," "Member Manager" or "Managing Member" is to be considered as satisfying the provisions of 18 O.S. §2015-~~(A)~~(3).

#### §14.3.1 Delegation of Manager's Authority.

....

Authority: ~~Title~~ 18 O.S. Sections 2013 & 2016

....

#### § 14.9 Recital of Identity, Successorship or Consolidation

Unless there is some reason disclosed of record to doubt the truth about the recital (*e.g.*, the recordation of a conflicting certificate prepared pursuant to 18 O.S. §2007), then after September 1, 1993, a recital of identity, successorship or consolidation by limited liability company merger or limited liability company name change (*e.g.*, the limited liability company was formerly known by another name) may be relied upon if contained in a recorded title document properly executed by the surviving or resulting entity.

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§ 14.10 Limited Liability Company with Series

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

B. BEGINNING ~~November~~ NOVEMBER 1, 2004 THOROUGH ~~October~~ OCTOBER 31, 2017: Title to real property which is to be held under a properly created LLC with established Series , domestic or foreign, must be acquired, held and conveyed in the name of the LLC, with appropriate indication that such title is held for the benefit of the specific series.

C. BEGINNING ~~November~~ NOVEMBER 1, 2017: Unless otherwise provided in the operating agreement, a 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.

....