

**UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY:  
STATUTES, CASES &  
TITLE EXAMINATION STANDARDS  
REVISIONS FOR 2019-2020**

**(COVERING JULY 1, 2019 TO JUNE 30, 2020)**

**BY:**

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**PRESENTED FOR THE:  
OKLAHOMA CITY REAL PROPERTY  
LAWYERS ASSOCIATION**

**AT:  
OKC– JANUARY 8, 2021**

# 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

# TABLE OF CONTENTS

## AUTHOR'S RESUME

### I. STATUTORY CHANGES

### II. CASE LAW

### III. TITLE EXAMINATION STANDARDS CHANGES

# NEWEST CHANGES TO TITLE STANDARDS

- 2020 Report of the Title Examination Standards Committee of the OBA Real Property Law Section
- Latest TES Committee Agenda with Schedule of Meetings

# APPENDICES

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

**KRAETTLI Q.EPPERSON  
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PROFESSIONAL:**

- **Partner: MEE HOGE PLLP (10-person law firm)**
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- **AV rated; Super Lawyers: 2009-2019 (Real Estate)**

**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)***



# **I. STATUTORY CHANGES**

**(see: [www.lsb.state.ok.us](http://www.lsb.state.ok.us))**

## **2020 Proposed Legislative Report Impacting Oklahoma Title and Real Property Attorneys Version 4 May 4, 2020**

**[By: Ryan Schaller]**



## List I - Real Property but not Title

*This list contains Bills that could impact the general Real Property Lawyer, but do not specifically impact our current Title Standards*

Bill No.: HB2821 Passed as part of HB2823

Brief Title: Extends Sunset date on Oklahoma's  
Abstractor Board

Sponsor: Gann

Description: Originally extended sunset on Board to 2026 (6-year renewal). I've heard that this has been substituted with a bill that only renews it for 1 year, but I'm not seeing that reflected on the bill tracking site yet. My understanding is that there is considerable uncertainty in the State House over the future of licensing boards.

The traditional approach for the last several decades in this state was to have semi-autonomous licensing/governing boards that elected their own members. There is pressure to change that. Some would like to completely remove professional licensing and governing boards in Oklahoma, others would like to see these boards into a single office, while still others prefer maintaining the status quo. Last year the board was also set to renew for six years but in the end was only renewed for a term of one year.

Status: **This was rolled into HB2823 - the “Omnibus Board sunset renewal bill” which passed Senate 44-1 on 5/12/2020 and is now awaiting a House Vote.**

Bill No.: SB1713 signed into law May 21, 2020

Brief Title: **Regulation of residential building design elements; prohibiting certain city and county actions**

Sponsor: David and Martinez

Description: Prohibits a county, municipality, or town from enacting residential building design element regulations unless it falls under specific exceptions such as historic districts. Specifically states that it does not affect CCRs entered into by private parties.

Status: Placed directly on the house calendar in early May, which means the original plan was for a house floor, but no vote held as of 5/14. Passed Senate 39-8 on 3/12.

# II. OKLAHOMA SUPREME COURT CASES: JULY 1, 2019 – JUNE 30, 2020

# **A. OKLAHOMA SUPREME COURT CASES**

**(JULY 1, 2019-JUNE 30, 2020)**

## **LIST OF CASES (Revised 10-6-20)**

NO.	TOPIC		CASE	OLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
A. <u>OKLAHOMA SUPREME COURT</u>					
1	Landlord’s Duty of Care to Tenant	Is the Landlord obligated to maintain an operating hot water tank.	Saunders v. Smothers	2019 OK 54	9/10/2019
					12/11/2019
2	Surface Damages Act	Remainderman’s claim to compensation as an “owner” under the Surface Damage Act.	Hobson v. Cimarex Energy Co.	2019 OK 58	9/17/2019
					12/5/2019
3	City Regulation of Marijuana	Cities’ ability to limit locations of marijuana growing farms by zoning.	Cloudi Mornings, LLC v. City of Broken Arrow	2019 OK 75	11/19/2019
					12/18/2019

# **A. OKLAHOMA SUPREME COURT CASES**

**(JULY 1, 2019-JUNE 30, 2020)**

## **LIST OF CASES (Revised 10-6-20)**

NO.	TOPIC		CASE	OLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
	A. <u>OKLAHOMA SUPREME COURT</u>				
4	Interspousal Gift of Real Property	Rebuttal of presumption of interspousal gift of real property.	Metcalf v. Metcalf	2020 OK 20	4/14/2020
					4/27/2020
5	Pretermitted Heir	Surrendered child as pretermitted heir.	Rogers v. Estate of Pratt	2020 OK 27	5/5/2020
6	Indian Reservation Disestablishment	Disestablishment of Creek Reservation.	McGirt v. Oklahoma	2020 U.S. 18-9526	?
					?

# 1. SAUNDERS V. SMOTHERS

## (2019 OK 54)

### ➤ GENERAL TOPIC:

- Landlord's Duty of Care to Tenant

### ➤ SPECIFIC TOPIC:

- Landlord obligation to maintain an operating hot water tank.



## ➤ FACTS:

- A landlord failed to repair a hot water tank for over 4 days after being told that it was not working.
- While carrying boiling water from the kitchen to the bathroom to take a bath, the tenant slipped and fell, dropping the scalding water on herself causing third degree burns.
- She spent a month in the hospital.
- She sued the landlord for negligence.



## ➤ HOLDING:

- Trial court granted Summary Judgment to landlord holding: (1) there was no duty to provide hot running water, (2) the landlord's conduct was not the proximate cause of the injury, and (3) the landlord's failure to meet the standards of the HUD housing quality standards did not constitute negligence per se
- COCA affirmed holding there was no duty
- The Ok Sup Ct reversed the trial court and vacated the COCA opinion, holding that as a matter of law the landlord must provide a "hot water heater in an operable condition."

## 2. HOBSON V. CIMAREX ENERGY CO. (2019 OK 58)

### ➤ GENERAL TOPIC:

- Surface Damages Act

### ➤ SPECIFIC TOPIC:

- Remainderman's claim to compensation as an “owner” under the Surface Damages Act.

## ➤ FACTS:

- The holder of a life estate of a surface interest reached an agreement for compensation with a oil company drilling wells on the land.
- The holder of the remainderman, subject to the life estate, sued the oil company for his share of the compensation.

## ➤ HOLDING:

- The trial court granted a motion to dismiss the oil company, because the remainderman was not a “surface owner”
- COCA reversed the trial court, holding that the holder of the vested remainder was a “surface owner” under the Surface Damages Act.
- The Ok Sup. Ct. vacated the COCA ruling and affirmed the trial court’s dismissal, because the Surface Damages Act’s definition of “surface owner” was ambiguous and its interpretation did not cover a vested remainderman who did not hold a current possessory interest

### 3. CLOUDI MORNINGS, LLC V. CITY OF BROKEN ARROW (2019 OK 75)

#### ➤ GENERAL TOPIC:

- City Regulation of Marijuana

#### ➤ SPECIFIC TOPIC:

- Cities' ability to limit locations of Marijuana growing farms by zoning

## ➤ FACTS:

- City of Broken Arrow enacted zoning ordinances concerning location of Marijuana retail establishments and growing businesses
- A Marijuana grower installed a farm and learned that a subsequently enacted city zoning ordinance prohibited a farm growing Marijuana from that location
- The grower asserted that the implementing statute prohibited the Cities from issuing any ordinances prohibiting or regulating marijuana businesses whatsoever.

## ➤ HOLDING:

- The trial court issued a declaratory ruling that Oklahoma cities were precluded from adopting regulations, zoning ordinances, etc. relating to any type of Marijuana business activities.
- The City appealed.
- The Ok Sup Ct ruled that the Oklahoma legislature had enacted a statute affirming that such prohibitions against cities regulating zoning or otherwise limiting “retail marijuana establishments”, but by defining such “establishments” to exclude marijuana farms the Ok Sup Ct concluded that cities could zone for marijuana farms
- This holding was effective under both the original and the amended ordinance

## ➤ HOLDING (continued):

- The Supreme Court remanded the case to the trial court to determine whether the amendment to the “ordinances had unduly changed or restricted zoning so as to prevent the opening of a retail marijuana establishment.”
- The trial court concluded there was no prohibition in the ordinance against making an “unduly change” on zoning for marijuana growers.
- In the absence of an enforcement action against the grower, and in the absence of an application for a variance and a denial thereof, the Supreme Court dismissed the action since the courts do not give “advisory opinions” in the absence of a “case or controversy”.



## 4. METCALF V. METCALF (2020 OK 20)

### ➤ GENERAL TOPIC:

➤ Interspousal Gift of Real Property

### ➤ SPECIFIC TOPIC:

➤ Rebuttal of Presumption of Interspousal Gift of Real Property.

## ➤ FACTS:

- Husband conveyed his separate real property into the name of his wife
- This was for the sole purpose of shielding his assets from his creditors
- Upon a subsequent divorce, the husband sought to have such land treated as his separate property, and given to him in the divorce.

## ➤ HOLDING:

- The trial court found the real property was husband's separate property and the conveyance to the wife was void, and gave it to him.
- The wife appealed.
- The COCA Affirmed.
- The wife sought cert.
- The Ok Sup Ct held that the rebuttable presumption of an interspousal gift can be overcome upon proof of a lack of donative intent, upon mistake, or to allow the land to be used to secure a mortgage.
- While the presumption of an interspousal gift of real property can be overcome, it cannot be overcome when the only proof is that such conveyance was to fraudulently hide assets from creditors.

# **5. ROGERS V. ESTATE OF PRATT**

## **(2020 OK 27)**

### ➤ **GENERAL TOPIC:**

➤ Pretermitted Heir

### ➤ **SPECIFIC TOPIC:**

➤ Surrendered Child as Pretermitted Heir.

## ➤ FACTS:

- Son was given up for adoption.
- On biological mother's death, her will said she had no children and left her entire estate to other specified caregivers and friends.
- Son objected to admission of will as pretermitted heir.

## ➤ HOLDING:

- Trial court held son was not a pretermitted heir and denied his application for a share of the estate.
- Son Appealed.
- COCA affirmed.
- Ok Sup Ct held son who is given up for adoption is still an heir and, unless specifically named and excluded in a will, is entitled to inherit
- An adoption decree coupled with a false statement in the will that the testator had no children (the son), causes an ambiguity, and such ambiguity was not overcome by disposition of the entire estate, and the signing of a “drive-by will”.
- Ok Sup Ct vacated COCA and reversed trial court.

## **6. MCGIRT V. OKLAHOMA** **(2020 U.S. NO. 18-9526)**

- **GENERAL TOPIC:**
- Disestablishment of Creek Reservation (Eastern OK)
- **SPECIFIC TOPIC:**
- State v. Federal Criminal Jurisdiction of Indian in Indian County

## ➤ HOLDING:

- The U.S. Congress never disestablished the Creek Reservation
- Therefore, the prosecution of a Creek Indian for a major crime committed on the Creek Reservation must be tried in federal court and not state court.



# ➤ U.S. SUPREME COURT HOLDING:

(Unclear as to impact, if any, on Title to Oklahoma land located in the Creek reservation?)

**OKLAHOMA COURT OF CIVIL**  
**APPEALS:**  
**JULY 1, 2019 – JUNE 30, 2020**

**B. OKLAHOMA COURT OF CIVIL APPEALS CASES**  
**(JULY 1, 2019 - JUNE 30, 2020)**  
**LIST OF CASES (Revised 10-6-20)**

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
7	Statute of Limitation	Note & mortgage foreclosure Statute of Limitation.	International Bank of Commerce v. Franklin	2019 OK CIV APP 56	9/20/2019
					10/16/2019
8	Attorney Fees in Foreclosure	Award of attorney fees outside hourly computation must include findings.	First National Bank & Trust Co. of Ardmore v. Kelly	2019 OK CIV APP 57	9/20/2019
					10/16/2019

**B. OKLAHOMA COURT OF CIVIL APPEALS CASES****(JULY 1, 2019 - JUNE 30, 20)****LIST OF CASES (Revised 10-6-20)**

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
					MANDATE
	GENERAL	SPECIFIC			
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
9	Dismissal vs. Summary Judgment	Granting Summary Judgment on Disputed Facts, and Dismissing Without Amendment	Bluff Creek Townhomes Assoc., Inc. v. Hammon	2019 OK CIV APP 59	9/16/2019
					10/16/2019
10	Ad Valorem Taxation	Ad Valorem Taxation Re- Classification Based on Grant of Easement	Kast Trust Farms v. Tyman	2019 OK CIV APP 74	9/27/2019
					12/5/2019

**B. OKLAHOMA COURT OF CIVIL APPEALS CASES****(JULY 1, 2019 - JUNE 30, 20)****LIST OF CASES (Revised 10-6-20)**

<b>NO.</b>	<b>TOPIC</b>		<b>CASE</b>	<b>OKLAHOMA CITATION</b>	<b>DECIDED</b>
					<b>MANDATE</b>
	<b>GENERAL</b>	<b>SPECIFIC</b>			
<b>B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u></b>					
<b>11</b>	<b>Unjust Enrichment</b>	<b>Unjust Enrichment for Taking Bonuses &amp; Royalty for Oil &amp; Gas Lease in the Absence of Title</b>	<b>Devon Energy Production Co. v. Wyckoff</b>	<b>2020 OK CIV APP 4</b>	<b>9/16/2019</b>
					<b>10/16/2019</b>
<b>12</b>	<b>Specific Performance</b>	<b>Purchase Contract Enforcement When Title Defective</b>	<b>Oak Tree Partners, LLC v. Williams</b>	<b>2020 CIV APP 5</b>	<b>11/26/2018</b>
					<b>2/13/2020</b>
<b>13</b>	<b>Mortgage Deficiency</b>	<b>Deficiency Computed Based on Appraised/Fair Market Value</b>	<b>Charles Sanders Homes v. Cook &amp; Associates</b>	<b>2020 OK CIV APP 14</b>	<b>5/14/2020</b>
					<b>6/17/2020</b>

**B. OKLAHOMA COURT OF CIVIL APPEALS CASES**  
**(JULY 1, 2019 - JUNE 30, 2020)**  
**LIST OF CASES (Revised 10-6-20)**

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
B. OKLAHOMA COURT OF CIVIL APPEALS					
14	Judgment Lien Attachment	Judgment Lien Only Attaches to “Actual” Interest of Debtor	Faust Corporation v. Harris	2020 OK CIV APP 20	12/17/2019
					6/17/2020
15	PUD Approval and Mandamus	Mandamus is not Allowed Against PUD Approval After Proper Notice	Kent v. City of Oklahoma City	2020 OK CIV APP 21	3/25/2020
					6/17/2020
16	FED Notice	FED Notice Inclusion of Late Fees	Tracy-Herald Corp. v. Jones	2020 CIV APP 25	2/11/2020
					6/17/2020
17	Writ of Assistance	Writ of Assistance is Only Available After Granted Possession	Wishon v. Sanders	2020 OK CIV APP 29	4/9/2020
					6/17/2020



**B. OKLAHOMA COURT OF CIVIL APPEALS CASES****(JULY 1, 2019 - JUNE 30, 20)****LIST OF CASES (Revised 10-6-20)**

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
	GENERAL	SPECIFIC			MANDATE
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
18	Agricultural/UCC Lien Priorities	UCC Perfected Lien on Crops is Senior to Unperfected Landlord’s Lien	Bank of Kremlin v. ARA, L.P.	2020 OK CIV APP 30	9/20/2019
					6/17/2020
19	Spousal Joinder on Homestead Deed	Deed from One Spouse to Both Not Require Both Signatures	In the Matter of the Estate of Hyer	2020 OK CIV APP 31	2/28/2020
					6/17/2020
20	Motion for Default Judgment	Motion for Default Judgment is Required Even When No Appearance is Made	Southwest Casing v. Foster	2020 OK CIV APP 37	5/22/2020
					6/24/2020

# 7. INTERNATIONAL BANK OF COMMERCE V. FRANKLIN (2019 OK CIV APP 56)

## ➤ GENERAL TOPIC:

➤ Statute of Limitation

## ➤ SPECIFIC TOPIC:

➤ Note & Mortgage Foreclosure Statute of Limitation



## ➤ FACTS:

- Husband and wife gave note and mortgage in 1996.
- They died in 2015 and land was distributed to son, with no mention of the note or mortgage.
- Note was kept current until 2017, and foreclosure was initiated against son.

## ➤ HOLDING:

- **Trial Court** gave Summary Judgment to Bank foreclosing the note and mortgage, denying son's claim of SOL since parents died
- Son appealed.
- COCA affirmed trial court, but only to extent of an in rem foreclosure of the mortgage
- Denied ability of creditor to seek a deficiency because no claim was filed in the mortgagors' probate.
- SOL did not begin to run upon death of mortgagors, but only upon stopping of payments.
- *[AUTHORS' COMMENT: Not sure you can file a claim in the probate, if the note is being kept current.]*

# 8. FIRST NATIONAL BANK & TRUST CO. OF ARDMORE V. KELLY (2019 OK CIV APP 57)

## ➤ GENERAL TOPIC:

➤ Attorney Fees in Foreclosure

## ➤ SPECIFIC TOPIC:

➤ Award of Attorney Fees Outside Hourly Computation Must Include Findings

## ➤ FACTS:

- Borrower went into default on a promissory note
- Bank sued to enforce the note and foreclose the mortgage.

## ➤ HOLDING:

- Summary judgment on the note and mortgage was granted to the bank.
- Recovery of attorney fees & expenses was provided in the mortgage.
- Only the bank provided evidence on the proper amount of attorney fees and expenses.
- The trial court granted attorney fees and expenses, but in an amount less than the simple hours technique (Burke)
- The bank appealed
- COCA held that Statute requires specific findings to justify reduction of attorney fees from simple mathematical computation of hours times hourly rate
- Absence of such findings in this case requires reversal for further proceedings to either use simple computation or make such findings.

# 9. BLUFF CREEK TOWNHOMES ASSOC., INC. V. HAMMON (2019 OK CIV APP 59)

## ➤ GENERAL TOPIC:

- Dismissal vs. Summary Judgment

## ➤ SPECIFIC TOPIC:

- Granting Summary Judgment on Disputed Facts, and Dismissing Without Amendment

## ➤ FACTS:

- Owner of condo unit (not renter) complained for years to HOA manager about flooding in his unit due to external water issues.
- Owner stopped paying association monthly dues, and the HOA filed an assessment lien and began a foreclosure of the lien in court.

## ➤ HOLDING:

- The trial court held the HOA lien should be foreclosed
- The HOA received summary judgment against the owner on the owner's counter claim for damages from flooding, and the owner's claim was dismissed for failure to state a claim
- COCA held the trial court erred by dismissing the owner's counterclaim without allowing leave to amend
- The trial court erred by granting HOA summary judgment on the foreclosure of the lien in the face of a factual dispute as to whether the owner was permitted to withhold rent for unmade repairs to the exterior, because the HOA failed to provide a copy of the HOA Declarations.
- Reversed and remanded.



# 10. KAST TRUST FARMS V. TWYMAN (2019 OK CIV APP 74)

## ➤ GENERAL TOPIC:

➤ Ad Valorem Taxation

## ➤ SPECIFIC TOPIC:

➤ Ad Valorem Taxation Re-Classification Based on Grant of Easement

## ➤ FACTS:

- 160 Acre tract of land was classified as agricultural for 13 years for Ad Valorem tax purposes
- Owner of land granted a surface easement (not fee simple) on 10 acres to CHK for use as a gas compressor plant
- Owner was paid \$60,000 for surface damages
- The easement provided that the surface reverted to the surface owner when abandoned
- County Assessor changed the classification for the 10-acre tract from agricultural to commercial
- The valuation for Ad Valorem taxes went from \$44,000 to \$96,000
- The valuation for the 10-acre tract alone went from \$2,000 to \$55,000
- The land owner protested the Assessors' increase to the Board of Equalization, and upon failure of the owner's protest, he filed suit with the District Court

## ➤ HOLDING:

- Trial court denied the owner's protest of the reclassification
- Owner appealed
- COCA held that "Taxes assessed against the servient tenement cover the property minus the easement which has been carved out of it and which has become attached to and is appurtenant to the adjoining property." (para. 11)
- And "The fee owner's interest in the 10-acre tract should only be assessed for a nominal amount." (para. 13)
- Reversed and remanded

# **11. DEVON ENERGY PRODUCTION CO. V.** **WYCKOFF** **(2020 OK CIV APP 4)**

## ➤ **GENERAL TOPIC:**

➤ **Unjust enrichment**

## ➤ **SPECIFIC TOPIC:**

➤ **Unjust enrichment for taking bonuses and royalty for oil and gas lease in the absence of title**

## ➤ FACTS:

- Alleged mineral owner approached Devon to sell a lease alleging it had recently been released
- The lease was provided without warranty of title
- Devon paid \$1.5 million in bonuses, plus more funds for royalty
- When Devon checked title, it was learned the owner held no interest because it was being held by production
- Devon demanded repayment, and owner refused claiming caveat emptor
- Devon sued to recover asserting:
  - Implied covenant of quiet enjoyment
  - Fraud
  - Rescission
  - Unjust enrichment

## ➤ HOLDING:

- Trial Court granted defendant's motion to dismiss for failure to state a claim on which relief could be granted
- Devon appealed
- COCA held that the specific fraud allegations caused the claim to survive the motion for dismissal because the owner made representations which were relied upon to Devon's detriment
- The case was reversed and remanded for determination whether the owner knew or should have known of the lack of any title
- The COCA quoted an earlier ruling that held: "*The doctrine of caveat emptor can never be used to perpetrate a fraud.*"

# **12. OAK TREE PARTNERS, LLC V. WILLIAMS**

## **(2020 OK CIV APP 5)**

### ➤ **GENERAL TOPIC:**

➤ **Specific Performance**

### ➤ **SPECIFIC TOPIC:**

➤ **Purchase Contract Enforcement When Title Defective**

## ➤ FACTS:

- Parties entered into a purchase contract for about 99 acres for \$5 million, where buyer was realtor
- Contract called for a survey and ensured “good and valid title, in fee simple”
- Deal fell through when the survey showed a shortage of 4-6 acres, and the title check showed the seller had already conveyed a tract to a third party
- The two sides made multiple attempts to suggest adjustments to the price and exchanged claims of fraud, and other breaches
- A lawsuit was filed for specific performance with counterclaims for fraud



## ➤ HOLDING:

- Buyer was denied “specific performance with abatement” and breach of contract because to do so would redo the parties’ contract
- Buyer was bound by its explicit waiver of invalid title
- Buyer failed to complete the transaction, so there could be no detrimental reliance on alleged fraud for inadequate acreage
- Buyer’s claim against the realtor for heightened duty to avoid fraud fails because there is no such duty here and fraud was not found
- Trial court’s granting of seller’s assertion of slander of title due to the buyer’s filing of lis pendens was reversed by the appellate court because, by law, if accurate, it cannot support a claim for slander of title

## ➤ HOLDING (continued):

- Trial court's granting of seller's triple damages and attorney fees for slander of title by filing the lis pendens was reversed, since there was no slander of title
- Seller's claim for fraudulent inducement from buyer's signing of a disclaimer of warranty of title was properly denied
- Seller's claim for breach of warranty by buyer's signing of a disclaimer of warranty of title was properly denied

# **13. CHARLES SANDERS HOMES V. COOK & ASSOCIATES**

**(2020 OK CIV APP 14)**

➤ **GENERAL TOPIC:**

➤ **Mortgage Deficiency**

➤ **SPECIFIC TOPIC:**

➤ **Deficiency Computed Based on Appraised/Fair Market Value**

## ➤ FACTS:

- Lender files mortgage foreclosure for default in note
- Borrower enters appearance but does not dispute the default and judgment for foreclosure
- Sheriff's sale conducted and sold for 2/3 of appraised value
- Borrower did not attend the sale
- After the sale was confirmed, lender sought a deficiency using the sale price to compute the deficiency rather than the higher appraised value
- The borrower did not attend the deficiency hearing

## ➤ HOLDING:

- The borrower filed motions to vacate with the trial court challenging the use of the sale price (2/3 of the appraised value) rather than the higher appraised price to determine the deficiency judgment (12 O.S. Section 1031(3))
- The trial court denied the multiple motions to vacate
- The borrower appealed the trial court ruling
- The COCA reversed the trial court ruling because it was an irregularity due to the use of the lower sale price (not the higher appraised value) to compute the deficiency, which process was contrary to 12 O.S. Section 686

# **14. FAUST CORPORATION V. HARRIS** **(2020 OK CIV APP 20) [SEE AUTHOR'S COMMENTS]**

## ➤ **GENERAL TOPIC:**

➤ **Judgment Lien Attachment**

## ➤ **SPECIFIC TOPIC:**

➤ **Judgment Lien Only Attaches to “Actual” Interest of Debtor**

## ➤ FACTS:

- Debtor received title of record to lands
- Debtor conveyed a one-half interest in such lands by unrecorded deed to a third party
- Debtor executed a contract to sell the other one-half interest to another third party
- No deed to the second third party was executed, but the parties testified and offered evidence of partial payment on the contract of sale
- A creditor of the debtor filed a judgment lien in the land records, and sold the lands under a special execution including the debtor and the first grantor who had intervened
- The debtor had prior to the sale filed bankruptcy and did not list these lands, and did not avoid this judgment lien

# ➤ HOLDING:

- The trial court ruled the first grantee held a one-half interest under an unrecorded deed, but that the second half was still held by the debtor because no deed was ever executed
- The trial court held that under the 16 O.S. Section 15 lien statute judgment liens only attached to land owned by the debtor and did not reach the one-half interest in the lands conveyed under a prior unrecorded deed, but did reach the contracted lands
- Lender appealed to establish their judgment lien covered all of the land and not just the one-half contracted to be sold to the second grantee
- The first grantee appealed to protect her interest, and her interest as the alter ego for the second buyer/grantee
- On a second appeal, COCA held the lien failed to attach to any of the lands, which were subject to an unrecorded deed and an unrecorded but fully paid contract





## ➤ AUTHOR COMMENTS:

- The operative statute: 16 O.S. Section 15, was amended in 1993 and the cases cited by the trial court herein by the COCA were decided prior to such amendment, except for a 1997 Ok Sup Ct case that quoted a pre-1993 case
- The author of this presentation published an OBJ article in 1997 asking whether such amendment changed the definition of a “third party” -- presumably this is the OBJ article referred to in this case at para. 9 (see: *Have Judgment Lien Creditors Become “Bona Fide Purchasers”?* 68 Oklahoma Bar Journal 1071 (March 29, 1997))
- Such OBJ article was prompted by an unpublished COCA opinion that held:
- “...where its meaning has been judicially determined, the amendment may reasonably indicate that the intention of the Legislature was to alter the law,” Magnolia Pipe Line Co. v. OTC, 1964 OK 113, para. 11.

## ➤ AUTHOR COMMENTS (continued):

- The unreported COCA case of Bumstead v. Bumstead, 67 OBJ 1889 (Okl. Div. 4: May 28, 1996) held:

*“Based on the legislature's amendment to section 15, once a judgment creditor filed a lien Darrell and Dorothy would become ‘third persons,’ and if their deed was not on file (which it was not), the judgment lien would be valid against their property. In reviewing the language of the amended statute, we find that the plain language clearly discloses that the Defendant's judgment lien as to Lot 13 is superior to any claim of Plaintiffs.”*

- The lender herein in Faust raised the same question, but the COCA failed to take the opportunity to address this unanswered question

# **15. KENT V. CITY OF OKLAHOMA CITY** **(2020 OK CIV APP 21)**

## **➤ GENERAL TOPIC:**

**➤ PUD Approval and Mandamus**

## **➤ SPECIFIC TOPIC:**

**➤ Mandamus Is Not Allowed Against PUD Approval After Proper notice**

## ➤ FACTS:

- Developer submitted PUD application to change from agricultural, residential and general business zoning to commercial, mixed use and office
- Planning commission approved the PUD application
- When the application proceeded to the City for approval hundreds of protestors appeared to formally protest
- The City approved the application
- The protestor filed two lawsuits: one to seek mandamus against the City for failing to literally follow the Plan OKC guidance document, and a second one to seek an injunction against enforcing and following the new zoning ordinance

## ➤ HOLDING:

- The two cases were consolidated due to common parties and facts and remedies
- The court's held consolidation was appropriate for judicial economy and to avoid conflicting decisions
- The process followed to give notice was deemed appropriate
- The City's action might need to consider, but did not need to literally follow the terms of the comprehensive Plan OKC
- The agreement of the City and the PUD developer's agreement to cooperate in defending against this action was not illegal
- The PUD was sustained

# 16. TRACY-HERALD CORP. V. JONES

## (2020 OK CIV APP 25)

### ➤ GENERAL TOPIC:

➤ FED Notice

### ➤ SPECIFIC TOPIC:

➤ FED Notice Inclusion of Late Fees

## ➤ FACTS:

- Residential tenant missed paying two month's rent
- Landlord gave 5-day notice to either pay rent or move out in 5 days, as prescribed by statute (41 O.S. Section 131 (B))
- Landlord included in such written notice both the rent and the accumulated late fees
- When tenant failed to either pay or vacate, the landlord filed an FED action seeking rent, fees, costs of suit and possession of premises

## ➤ HOLDING:

- Trial court granted landlord's claims against tenant
- Tenant filed motion to vacate the judgment for several reasons, but only one was presented on appeal—the trial court was without subject matter jurisdiction solely because the Notice to Pay included not only the monthly rent but the late fees as well
- The trial court denied the motion to vacate
- The tenant appealed
- The COCA affirmed the trial court because the statute did not specifically require the Notice to Pay to be limited to rent



# **17. WISHON V. SANDERS**

## **(2020 OK CIV APP 29)**

### **➤ GENERAL TOPIC:**

**➤ Writ of Assistance**

### **➤ SPECIFIC TOPIC:**

**➤ Writ of Assistance Is Only Available After Granted Possession**

## ➤ FACTS:

- Plaintiff sued defendants to recover on a note and to undertake a sheriff's sale on such judgments
- After a successful lawsuit and a sheriff's sale confirming title in the plaintiff, the plaintiff had trouble securing possession of the premises
- Plaintiff sought writ of assistance to secure possession

## ➤ HOLDING:

- Plaintiff secured three quiet title judgments to confirm its purchase
- Plaintiff had trouble securing possession of the premises
- Plaintiff sought writ of assistance to secure possession
- Trial court denied writ of assistance due to “dormancy” of the quiet title judgment
- Plaintiff appealed
- COCA held that the dormancy statute (12 O.S. Section 735) only applied to money judgments and not quiet title suits
- However, the COCA held that because none of the quiet title judgements granted the right of possession, a writ of assistance cannot be granted
- The case was affirmed as modified and remanded, for Plaintiff to determine its right to possession

# 18. BANK OF KREMLIN V. ARA, L.P. (2020 OK CIV APP 30)

## ➤ GENERAL TOPIC:

➤ Agricultural/UCC Lien Priorities

## ➤ SPECIFIC TOPIC:

➤ UCC Perfected Lien On Crops Is Senior to Unperfected Landlord's lien

## ➤ FACTS:

- Landlord took lease from agricultural tenant which included a lien on crops; such lease was not recorded
- Tenant borrowed money from lender and granted a security interest under Article 9, which was properly perfected
- Tenant defaulted on rent, and then died
- Landlord seized possession of the land and harvested and sold the crops to apply on the unpaid rent
- Tenant defaulted on the promissory notes to the lender
- Lender filed suit against the decedents' estate, the landlord and others for conversion of the crops

- **HOLDING:**
- Trial court held that the UCC Article 9 provisions expressly made its security interest in crops senior (if perfected) to other unperfected lien claims, including a landlord's lien on crops
- COCA affirmed

# **19. IN THE MATTER OF THE ESTATE OF** **HYER** **(2020 OK CIV APP 31) [SEE AUTHOR'S** **COMMENTS]**

## **➤ GENERAL TOPIC:**

**➤ Spousal Joinder on Homestead Deed**

## **➤ SPECIFIC TOPIC:**

**➤ Deed From One Spouse to Both Not Require Both Signatures**

## ➤ FACTS:

- Husband owned land before marriage
- After marriage (his second), and before husband's death, he deeded the land to himself and his second wife as joint tenants
- Only the husband signed the deed; the wife did not
- The husband died, and a probate was filed
- The surviving wife filed the appropriate affidavit terminating joint tenancy
- In anticipation of the intention of the son of the husband from an earlier marriage of the husband contesting the joint tenancy deed, the wife asked the probate to decide ownership



## ➤ HOLDING:

- Trial court read 16 O.S. Section 4 very literally where it stated that “No deed...shall be valid unless in writing and subscribed by both husband and wife,...”
- The probate court ruled that the deed which had only the husband’s signature was invalid, leaving the land in the estate
- The wife appealed
- COCA cited multiple Ok Sup Ct cases from over the years which held that the purpose of this statute was to protect the homestead from one spouse conveying the homestead to a third party, and thereby harm the non-joining spouse
- COCA reversed and remanded the case

## ➤ AUTHOR'S COMMENTS:

- The author of this presentation published an OBJ article in 2009 criticizing an earlier COCA opinion which ruled that a deed from one spouse to the other was invalid due to the absence of the grantor spouse's signature: *Marital Homestead Right Protection: Impact of Hill v Discover Card?* 80 OBJ 2409 (2009)
- Such OBJ article was based on the same Ok Sup Ct cases cited in this case discussed herein
- This current COCA opinion (*Estate of Hyer*) refers to such OBJ article favorably in Footnote 6

# **20. SOUTHWEST CASING V. FOSTER** **(2020 OK CIV APP 37) [SEE AUTHOR'S COMMENTS]**

## ➤ **GENERAL TOPIC:**

➤ **Motion for Default Judgment**

## ➤ **SPECIFIC TOPIC:**

➤ **Motion for Default Judgment Is Required Even When No  
Appearance is Made**

## ➤ FACTS:

- Plaintiff/employer filed lawsuit to collect for the value of a truck taken and resold by the defendant/employee
- Plaintiff served defendant using wrong case number
- Defendant failed to entered an appearance and no Answer was filed
- Court entered a default judgment against the defendant
- Defendant filed a Motion to Vacate

## ➤ HOLDING:

- Defendant appealed from denial of Motion to Vacate for Irregularity due to the absence of a Motion for Default Judgment under 12 O.S. Section 1031(3)
- COCA reversed and remanded the judgment because *Schweigert*. 2015 OK 20 held: “a motion [for default judgment] must be filed in all instances, even when a party fails to make an appearance...”, and such failure to vacate the default judgment was an “irregularity” Such additional requirement created under *Schweigert* was echoed in *Asset Acceptance*, 2018 OK CIV APP 26,
- A dissent noted that this new requirement for a Motion for Default Judgment “in all instances” “would create new legal requirements for Plaintiffs that are not found in District Court Rule 10.’

## ➤ AUTHOR'S COMMENTS:

- The author of this presentation published an OBJ article criticizing the holding in both the *Schweigert* and *Asset* cases (which cases failed to reflect the legislative amendment of the default statute), and especially noting the obvious unintentional “typographical” dicta in *Schweigert* which was picked up and applied in *Asset* and now in this *Southwest Casing* decision: “a motion must be filed in all instances...”
- See: "Seeking Default Judgment: After *Schweigert*", 91 Oklahoma Bar Journal 54 (April 2020)

HOWEVER, CONSIDER THE LANGUAGE OF 12 O.S. SECTION 2007:

*B. MOTIONS AND OTHER PAPERS.*

*1. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.*

### III. TITLE EXAMINATION STANDARDS CHANGES



# 2020 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

*Proposed Amendments to Title Standards for 2021, to be presented for approval by the House of Delegates, Oklahoma Bar Association prior to or at the 2020 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 2020.

Proposals approved by the Section will be presented to the House of Delegates prior to or at the 2020 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 proposes to make changes to Standard 8.1, 15.4, 25.5 and 25.7 to reflect the passage of 10 years since the repeal of the Oklahoma Estate Tax.*

## **8.1 TERMINATION OF JOINT TENANCY ESTATE AND LIFE ESTATES**

~~C. A waiver of release of the Oklahoma estate tax lien for the joint tenant or life tenant must be obtained unless:~~

- ~~1. A district court has ruled pursuant to 58 O.S. §282.1 that there is no estate tax liability;~~
- ~~2. The sole surviving joint tenant or remainder interest holder is the surviving spouse of the deceased joint tenant or sole life tenant;~~

- ~~3. The death of the joint tenant is on or after January 1, 2010; or~~
- ~~4. The Oklahoma estate tax lien has otherwise been released by operation of law.~~

See TES Standard 25.5 Oklahoma Estate Tax Lien.

## 15.4 ESTATE TAX CONCERNS OF REVOCABLE TRUSTS

~~Where title to real property is vested in the name of a revocable trust, or in the name of a trustee(s) of a revocable trust, and a subsequent conveyance of such real property is made by a trustee(s) of a revocable trust, who is other than the settlor(s) of such revocable trust, a copy of the order of the Oklahoma Tax Commission releasing or exempting the estate of the non-joining settlors from the lien of the Oklahoma estate tax,~~

and a closing letter from the Internal Revenue Service, if the estate is of sufficient size to warrant the filing of a federal estate tax return, should be filed or record in the office of the county clerk where such real property is located unless evidence, such as an affidavit by a currently serving trustee of the revocable trust is provided to the title examiner to indicate that one of the following conditions exists:

~~D. More than ten (10) years have elapsed since the date of the death of the non-joining settlor(s) or since the date of the conveyance from the trustee(s) and no Federal estate tax lien or warrant against the estate of the non-joining settlor(s) appears of record in the county where the property is located.;~~  
~~or~~

~~D. As to the requirement for a copy of the order of the Oklahoma Tax Commission releasing or exempting the estate of the non-joining settlor(s) from the lien of the Oklahoma estate tax only, the date of death of the non-joining settlor(s) is on or after January 1, 2010.~~  
See TES Standard 25.5 Oklahoma Estate Tax Lien.

## 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.~~

~~Oklahoma estate tax lien obligations for decedents dying prior to January 1, 2010 remain in effect by are extinguished ten (10) years after the date of death. 68 O.S. §804.1~~



~~The Oklahoma estate tax survives for deaths occurring subsequent to January 1, 2010, to the extent the Oklahoma 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 Oklahoma estate tax lien attaches to any property for deaths occurring on or after January 1, 2010.~~

#### ~~A. Scope~~

~~—For decedents who die on or before December 31, 2009, the Oklahoma estate tax lien attaches to all of the property which is part of the gross estate of the decedent,~~



as defined under Article 8 of the Oklahoma Tax Code, immediately upon the death of the decedent, with the exception of property which falls under one (1) or more of the following categories:

1. Property used for payment of charges against the estate and expenses of administration, allowed by the court having jurisdiction thereof; or
2. Property reported to the Oklahoma Tax Commission by the responsible party or parties which shall have passed to a bona fide purchaser for value, in which case such tax lien shall attached to the consideration received from such purchaser

~~by the heirs, legatees, devisees, distributes, donees, or transferees; or~~

~~3. Property passing to a surviving spouse, either through the estate of the decedent, by joint tenancy, or otherwise.~~

~~Authority: 68 O.S. §811.~~

~~Comment: The title examiner should be provided with sufficient written evidence to be satisfied that the particular real property falls under one or more of the exceptions as listed above. Otherwise, the title examiner should assume that all real property which is part of the gross estate of the decedent is subject to the lien of the Oklahoma estate tax.~~

## B. Duration

~~The Oklahoma estate tax lien continues as a lien on all of the property in the decedent's gross estate, except for the categories of property as described in "A" above, for ten (10) years from the death of the decedent, unless an order releasing taxable estate or order exempting the estate from estate tax is obtained from the Oklahoma Tax Commission as to the property in question.~~

~~Subsequent to the lapse of ten (10) years after the death of any decedent, title acquired through such decedent shall be considered marketable as to Oklahoma inheritance, estate or transfer tax liability unless prior thereto a tax warrant filed by the Oklahoma Tax Commission appears of record. If the Oklahoma Tax Commission causes a tax warrant to be filed of record within said 10 (10) year period, then a release of that~~

~~tax warrant must be obtained and filed of record.~~

~~Authority: 68 O.S. §§811(e) and 815 (c); Okla. Atty. Op. No. 72-122 (May 1, 1972); *State ex rel. Williamson v. Longmire*, 281 P.2d 949 (Okla. 1955).~~

## ~~C. Repealer~~

~~There will be no Oklahoma estate tax lien on the estate of a decendent with a date of death on or after January 1, 2010.~~

~~Authority: 68 O.S. §802 Repealed by Laws 2006, 2<sup>nd</sup> Extr. Sess., HB1172, c.42 §6, eff. January 1, 2010.~~

~~For deaths occurring on or after January 1, 2010, no Oklahoma estate tax lien attaches to the property of the decendent.~~

For deaths occurring prior to January 1, 2010, the Oklahoma estate tax lien is extinguished upon the expiration of ten (10) years from the date of death of the decedent unless prior thereto the Oklahoma Tax Commission causes a tax warrant to be filed of record in the County where the decedent owned property. In that case, the Oklahoma estate tax lien shall continue as a lien for a period of ten (10) years on all property which was part of the decedent's gross estate not otherwise exempt by the law in any county where the tax warrant was filed until a release of the tax warrant is issued and filed of record. Prior to the release or extinguishment of any such tax warrant, the Oklahoma Tax Commission may refile the tax warrant in the office of the county clerk.

A tax warrant so refiled shall constitute and be evidence of the state's lien upon the title to any interest in real property until released or for a maximum of ten (10) years from the date of the refiled tax warrant. Absent an unreleased tax warrant of record which has not expired, no release or order exempting estate tax liability is required for any of the decedent's property to be marketable.

See also TES 25.6(B)

Authority: 68 O.S. §§231 and 234; 68 O.S. §804.1 and OAC 710:35-3-9



## 25.7 GIFT TAXES, OKLAHOMA

~~The procedure for the enforcement of any gift tax which might be due the State of Oklahoma is that prescribed in the Uniform Tax Procedure Act, 68 O.S. §§201-249, under which no lien attaches until and until and unless a tax warrant or certificate is filed in the office of the county clerk of the county where the land is located. See 68 O.S. §§230, 231 and 234.~~

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

Repealed.

Authority: 18 O.S. §§2048, 2049 and 2055.3

## PROPOSAL NO. 2

*The Committee recommends Comment to Standard 14.8 be added to clarify the authority of a Foreign Limited Liability Company to acquire and convey title to real property located in Oklahoma.*

### 14.8 FOREIGN LIMITED LIABILITY COMPANIES DEEMED TO BE LAWFULLY ORGANIZED AND REGISTERED TO DO BUSINESS

Authority: 18 O.S. §§2042, 2043, 2048, 2049

Comment: A foreign limited liability company need not be registered in Oklahoma to acquire and convey title to real property located in Oklahoma.



## PROPOSAL NO. 3

*The Committee recommends Standard 24.14 be amended as follows to reflect the effect of Hub Partners XXVI, Ltd v. Barnett, 2019 OK 69.*

### 24.14 INCOMPLETE MORTGAGE FORECLOSURES

The title to real property shall be deemed marketable regarding a mortgage foreclosure action in which no sheriff's sale has occurred; or, the sheriff's sale has been vacated or set aside by order of the court, if the following appear in the abstract:

A. A properly executed and recorded release of all of the mortgages set out in the foreclosure action as to the real property covered by the title examination; and

- B. If a statement of judgment or affidavit of judgment has been filed in the land records of the county clerk in the county in which the real property is located evidencing a judgment lien for a money judgment granted in the foreclosure action and the judgment lien has not expired by the passage of time, a release of the judgment lien filed in the land records of the county clerk in the county in which the real property is located;~~;~~ ~~and~~
- C. (1) A dismissal, with or without prejudice, of the entire mortgage foreclosure action;~~;~~ filed in the court case, by the plaintiff and any cross-petitioners ~~in the action or dismissal by court order;~~ or (2) a partial dismissal, with or without prejudice, of the mortgage foreclosure action, filed in the court case, by the plaintiff and any cross-petitioners ~~in the~~

~~action or dismissal by court order;~~ or (2) a partial dismissal, with or without prejudice, of the mortgage foreclosure action, filed in the court case, by the plaintiff and any cross-petitioners ~~in the action or partial dismissal~~ by court order, dismissing the action insofar as it relates to or affects the subject real property; and

C. If a deed-in-lieu of foreclosure has been recorded, the items listed in A, B, and C above, as applicable, and a release of any attorney's lien created pursuant to 5 O.S. §6.

Authority: 12 O.S. §§686 and 706; *Anderson v. Barr*, 1936 OK 471, 62 P.2d 1242; *Bank of the Panhandle v. Irving Hill*, 1998 OK CIV APP 140, 965 P.2d 413; *Mehojah v. Moore*, 1987 OK CIV APP 43, 744 P.2d 222; ~~and~~ *White v. Wensauer*, 1985 OK 26, 702 P.2d 15; and *Hub Partners XXVI, Ltd. V. Barnett*, 2019 OK 69.

# PROPOSAL NO. 4

*The Committee recommends Standard 30.13 be amended as follows to clarify previous subparagraph G and move the language to the front of the standard.*

## 30.13 ABSTRACTING

*On September 18, 1996, the State Auditor and Inspector issued Declaratory Ruling 96-1, which rejected the concept of “thirty-year” abstracts and prohibited abstractors from preparing abstracts under this standard after May 1, 1996. Abstracts, compiled and certified on or before May 1, 1996, may still be used as a base abstract when a separate supplemental abstract has been prepared.*

For historical reference, base abstracts created in reliance of this standard prior to May 1, 1996 Abstracting under the Marketable Record Title Act shall be are sufficient for examination purposes when the following is shown in the abstract:

A. The patent, grant or other conveyance from the government.  
~~G. On September 18, 1996, the State Auditor and Inspector issued Declaratory Ruling 96.1, which prohibits abstractors from preparing abstracts under this standard after May 1, 1996. Abstracts, compiled and certified on or before May 1, 1996, may still be used as a base abstract when a separate supplemental abstract has been prepared.~~

# PROPOSAL NO. 5

*The Committee recommends a new Standard 1.5 be included to assist title examiners with the various 2020 SCAD order related to Covid-19 (Coronavirus).*

## 1.5 2020 COVID-19 PANDEMIC

- A. Pursuant to a series of Emergency Joint Orders, the Oklahoma Supreme Court suspended all deadlines, prescribed by statute, rule, or order in any civil, juvenile, or criminal cases for the period from March 16, 2020 to May 15, 2020.
- B. Pursuant to the *Third Emergency Joint Order Regarding The Covid-19 State of Disaster* issued by the Oklahoma Court, for the period from March 16, 2020 to May 15, Supreme 2020, all rules, procedures and deadlines,



whether prescribed by statute, or order in any civil, juvenile, or criminal case were suspended, will be treated as a tolling period. May 16<sup>th</sup> will be the first day, counted in determining the time to act. The entire time permitted by statute, rule or procedure is not renewed.

C. Pursuant to the *Third Emergency Joint Order*, “all dispositive orders entered by judges between March 16, 2020 and May 15, 2020 are presumptively valid and enforceable.” When an examiner finds a situation in proceedings under examination where a judge held a hearing, signed an order, entered a judgment, or otherwise entered a ruling between March 16, 2020 and May 15, 2020, the examiner may rely on the *Third Emergency Joint Order’s* presumption of validity and enforceability absent instruments in the record or other evidence that rebuts the presumption.

Authority: *Third Emergency Order Regarding the COVID-19 State of Disaster*. 2020 OK 23, 462 P.3d 703, *Second Emergency Order Regarding the COVID-19 State of Disaster*. 2020 OK 24, 462 P.3d 262. *First Emergency Order Regarding the COVID-19 State of Disaster*. 2020 OK 25, 462 P.3d 704.

Comment 1: Paragraphs 7 and 8 of the *Third Emergency Order* provide instructions for computing deadlines impacted by the period of March 16, 2020 to May 15, 2020:

“7. For all cases pending before March 16, 2020, the deadlines are extended for only the amount of the days remaining to complete the action. For example, if the rule required the filing of an appellate brief within 20 days, and as of March 16, ten (10) days remained to filing the brief, then the party has 10 days with May 16, 2020 being the first day.



8. For all cases where the time for completing did not commence until a date between March 16, 2020 and May 15, 2020, the full amount of time to complete the action will be available. May 16<sup>th</sup> shall be the first day counted determining the time to act.”

Comment 2: The *Third Emergency Joint Order* clarifies that the period between March 16, 2020 and May 15, 2020, is a tolling period. All applicable statute of limitations under Oklahoma law were tolled for this period.

Comment 3: The *Third Emergency Joint Order* encouraged Judges, “to continue to use remote participation to the extent possible by use of telephone conferencing, video conferencing pursuant to Rule 34 of the Rules of District Court, Skype,

Bluejeans.com and webinar based platforms...Judges are encouraged to develop methods to give reasonable notice and access to the participants and the public.”

# Proposal No. 6

*The committee recommends standard 3.2(A) be amended as follows to clarify affidavits cannot be in place of an estate administration and to clarify that an affidavit related to severed minerals as provided 16 O.S. §67 is an exception to 3.2(A).*

## 3.2 AFFIDAVITS AND RECITALS

A. Recorded affidavits and recitals should cover the matters set forth in 16 O.S. §§~~82~~ and 83; they cannot substitute for a conveyance, administration of an estate, or probate of a will, except as provided in 16 O.S. §67.

## Proposal No. 7

*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.*

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

*“FOR THE PURPOSE OF EDUCATING  
AND GUIDING TITLE EXAMINATION ATTORNEYS”*

SEPTEMBER 19, 2020 AGENDA  
(As of September 14, 2020)

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

*[Note: if you want to download a free pdf copy of the current 2020 TES  
handbook, go to [www.eppersonlaw.com](http://www.eppersonlaw.com)]*

\_\_\_\_*SATURDAY, SEPTEMBER 19, 2020 “REMOTE”*\_\_\_\_

*BUSINESS/GENERAL DISCUSSION OF CURRENT EVENTS*

9:30 a.m. – 10:15 a.m.

Hot Topics: General Questions: Kraettli Epperson

Legislative Report: Ryan Schaller

Previous Month’s TES Committee Minutes: Barbara Carson

*PRESENTATIONS*

Speakers (Sub- Comm.)	Standard #	Status	Description

=====PENDING=====

10:15 a.m. – 11:00 a.m.

<b><u>Seda</u></b> <b>Dowd</b> <b>Wimbish</b> <b>Charney</b> <b>Kempf</b> <b>McDonald</b> <b>Anthony</b> <b>Goins</b> <b>Brown</b> <b>McMillin</b> <b>Loffland</b> <b>McEachin</b> <b>Orlowski</b> <b>Stuhr</b>	<b>3.2</b>	<b>Sep.</b>  <b>Draft</b>	<b><i>AFFIDAVIT AND RECITALS</i></b> <b>The question has arisen whether and Affidavit of Heirship with Will attached (for oil and gas interests) can be used but following intestate law instead of the terms of the attached Will.</b>
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**11:00-11:15 a.m. BREAK\*\*\*\*\***

**11:15 a.m. – 12:00 NOON\*\*\*\*\***

**PRESENTATIONS (CONT'D)**

<b><u>Schaller</u> Seda Keen Tavilson</b>	<b>NEW</b>	<b>Sep. Draft</b>	<b><i>COVID-19 COURT RELATED DELAYS</i></b> Need to create a Standard to memorialize the impact of the SCAD dealing with the extending court related deadlines.
<b><u>Keen</u> Epperson McEachin Seda Jones Schaller Brown</b>	<b>30.11 &amp; 30.13</b>	<b>Sep. Draft</b>	<b><i>ABSTRACT (30-YEAR)</i></b> Probably need to clarify that there can be no new “30-Year” abstracts, and all new abstracts must include all instruments, not just post-root instruments.



<u>Ward</u> <u>Seda</u> <u>Carson</u>	General	Sep. Report	<i>CONTENT OF ABSTRACT</i> Need to analyze proper role of title examination standards in light of the authority and duty of the OAB.
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<u>Ward</u> <u>Seda</u> <u>Carson</u>	24.6	Sep. Report	<i>ABSTRACTING</i> Consideration of either adding additional pleadings to show in the abstract <u>or</u> removing the entire TES 29.6, due to authority of OAB to regulate abstract content.
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\*\*\*\*\* END OF PRESENTATIONS \*\*\*\*\*

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

Astle Tack Whittrock	24.14	July App'd	<i>INCOMPLETE MORTGAGE FORECLOSURE</i> Need minor changes to deal with judgment liens and vacated sheriff sales.
<u>Wimbish</u> Struckle Schaller Brown		May App'd	<i>OKLAHOMA ESTATE TAXES EXPIRATION</i> The question arose as to whether the passage of 10 years from the date of the repeal of the Oklahoma Estate Tax Lien Statute (effective Jan. 1, 2010) means we need to revise some of our existing Standards to reflect that fact.

<u>Astle</u> Reed Kempf	14.8	Feb. App'd	<i>FOREIGN LIMITED LIABILITY COMPANIES...</i> Is a Foreign Limited Liability Company required to be registered in OK prior to receiving, holding, and transferring real property.
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=====UNSCHEDULED=====

=====TABLED TO 2021=====

<u>Carson</u> <u>Orlowski</u> Struckle	17.4	Tabled to 2021	<i>TRANSFER ON DEATH DEEDS</i> Need to clarify whether all of the beneficiaries need to sign the post-death affidavit.
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<b><u>Wittrock</u> Schaller Ward</b>	<b>6.9 (New)</b>	<b>Tabled To 2021</b>	<b><i>REMOTE ONLINE NOTARY</i></b> New Standard 6.9 to address new law allowing Remote Online Notaries and recording of electronic documents in tangible form.
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<b><u>Keen</u> <u>Reed</u> <u>Wimbish</u> Orlowski McLean Sullivan Jones Shields Laughlin Wolf</b>	<b>New</b>	<b>Tabled To 2021</b>	<b><i>INDIAN TITLE STANDARD</i></b> Report on status of efforts to identify changes needed throughout the Standards to reflect the impact of Indian ownership of land. The impact on Indian titles through the application of the SLTA and the MRTA may need to be clarified.
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## *COMMITTEE OFFICERS:*

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**OBA Bulletin Board Highlights Reporter: Faith Orłowski**

**Handbook Editor: Rhonda McLean**

**Title Update Seminars Director: Kraettli Q. Epperson**

**(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2020\Agenda2020 09(Sept.)**

**2020 Title Examination Standards Committee**  
**(Third Saturday: January through September)**  
**Time: 9:30 a.m. to 12 noon**

<b><u>Month</u></b>	<b><u>Day</u></b>	<b><u>City/Town</u></b>	<b><u>Location</u></b>
January	18	Tulsa	Tulsa County Bar Center
February	15	Stroud	Stroud Conference Center
March	21	CANCELLED	Due to Coronavirus
April	13*	REMOTE	
May	18	REMOTE	
June	15	REMOTE	
July	20	REMOTE	
August	17	REMOTE	
September	21	REMOTE	

**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**



# MY 10 MOST RECENT GENERAL TITLE ARTICLES

(last revised May 12, 2020)

324. “Seeking Default Judgment: After *Schweigert*”, 91 Oklahoma Bar Journal 54 (April 2020)
306. “Constructive Notice: Oklahoma’s Hybrid System Affecting Surface and Mineral Interests”; 89 Oklahoma Bar Journal 40 (January 2018)
294. “The Oklahoma Marketable Record Title Act ('aka' The 'Re-Recording Act'): An Argument That This 30-Year Curative Act Can Extinguish Co-Tenancies”; 87 Oklahoma Bar Journal 27 (October 15, 2016)
276. “Marketable Record Title: A Deed Which Conveys Only the Grantor’s ‘Right, Title and Interest’ Can be A ‘Root of Title’”; 85 Oklahoma Bar Journal 1104 (May 17, 2014)



256. "The Need for a Federal District Court Certificate in All Title Examinations: A Reconsideration", 83 Oklahoma Bar Journal 2367 (November 3, 2012)
248. "The Real Estate Mortgage Follows the Promissory Note Automatically Without an Assignment: The Lesson of *BAC Home Loans*", 82 Oklahoma Bar Journal 2938 (December 10, 2011)
239. "Oklahoma's Marketable Record Title Act: An Argument for its Application to Chains of Title to Severed Minerals after *Rocket Oil and Gas Co. v. Donabar*", 82 Oklahoma Bar Journal 622 (March 12, 2011)
226. "Marital Homestead Rights Protection: Impact of *Hill v. Discover Card?*" 80 Oklahoma Bar Journal 2408 (November 21, 2009)
214. "Well Site Safety Zone Act: New life for Act", 80 Oklahoma Bar Journal 1061 (May 9, 2009)

162. "Real Estate Homesteads in Oklahoma: Conveying and Encumbering Such Interest", 75 Oklahoma Bar Journal 1357 (May 15, 2004)

Any questions?

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