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TITLE STANDARDS FROM THE  
MORTGAGEE'S STANDPOINT

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NEW DEVELOPMENTS IN RESIDENTIAL MORTGAGE LAW

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## I. INTRODUCTION

The lender's collateral is only as good as the quality of the title held by the mortgagor.

In order to ensure that title to its collateral is in fact held by its mortgagor, several steps are usually taken by a prudent lender, including the following:

1. An abstract of title is brought to date and certified for the subject property, and the abstract is then examined by an attorney; any defects identified during such examination are then required to be cured or released before the loan is made;
2. A title insurance policy insuring against loss due to lack of marketable title is requested and issued in favor of the lender, in an amount equal to the loan amount; and,
3. The mortgage itself is typically drafted to include language sufficient to grant the statutory warranties.

These above three protective steps are explored briefly in this paper, with an emphasis on the title examination questions dealt with in each.

## II. MARKETABLE TITLE

A lender seeking a first mortgage lien position desires for the borrower's title to be (a) based on a solid chain of title from inception of title (i.e., usually a patent from the state or federal government) through to the current borrower, and (b) free of prior encumbrances, or unacceptable easements and restrictions.

In order to know that the quality of title being mortgaged meets a high standard, the title examiner will examine the abstract (or county records in lieu thereof) and will seek to identify any remedial action needed to make the title "marketable" (or "merchantable").

According to the Title Examination Standards (discussed in more detail later) a marketable title is defined as follows:

### 4.1 Marketable Title Defined

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

"A marketable or merchantable title is synonymous with a perfect title or clear title of record; and is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record."

### 19.1 Remedial Effect

The Marketable Record Title Act is remedial in character and should be relied upon as a cure or remedy for such imperfections of title as fall within its scope.

## 19.2 Requisites of Marketable Record Title

A Marketable Record Title under the Marketable Record Title Act exists only where (1) A person has an unbroken chain of title of record extending back at least thirty (30) years; and (2) Nothing appears of record purporting to divest such person of title.

## 19.4 Unbroken Chain of Title of Record

"An unbroken chain of title of record", within the meaning of the Marketable Record Title Act may consist of (1) A single conveyance or other title transaction which purports to create an interest and which has been a matter of public record for at least thirty (30) years; or (2) A connected series of conveyances or other title transactions of public record in which the root of title has been a matter of public record for at least thirty (30) years.

## 19.4 Matters Purporting to Divest

Matters "purporting to divest" within the meaning of the Marketable Record Title Act are those matters appearing of record which, if taken at face value, warrant the inference that the interest has been divested.

The 1970 American Land Title Association Loan Policy "insures ... against loss or damage ... sustained or incurred by the insured by reason of: ... 4. Unmarketability of such title."

When the mortgage contains the following language in its granting clause, "and warrant title to the same" (16 O.S. §40), and is otherwise "made in substantial compliance" with titles 16 and 24, then the statutes provide:

§19. Warranty deed conveys what--Implied terms

A warranty deed made in substantial compliance with the provisions of this chapter, shall

convey to the grantee, his heirs or assigns, the whole interest of the grantor in the premises described, and shall be deemed a covenant on the part of the grantor, that at the time of making the deed he is legally seized of an indefeasible estate in fee simple of the premises and has good right and full power to convey the same; that the same is clear of all encumbrances and liens, and that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession thereof, and will defend the title thereto against all persons who may lawfully claim the same, and the covenants and warranty shall be obligatory and binding upon any such grantor, his heirs and personal representatives as if written at length in such deed.

In the event the marketability of the mortgaged title is challenged, the mortgagor/warrantor must, upon notice, defend the title (16 O.S. §§22-23). If the mortgagor/warrantor fails, after notice, to defend the title, the mortgagee/waranteee may defend against the challenge and sue the mortgagor/warrantor for all costs of such defense (16 O.S. §25).

If the mortgagor/warrantor or mortgagee/waranteee unsuccessfully defends title, the statutes provide:

16 §24. Defense by warrantor--Recovery by warrantee

Where any grantor appears in any action to defend his warranty or fails to appear after due notice, the court shall determine all the rights of all the parties, and in case the recovery is adverse to the warranty, the warrantee shall recover of the warrantor the price of the land paid for the conveyance at the time of the warranty, the value of all improvements lost, if any, and all sums necessarily expended, including a reasonable attorney fee, and interest at the rate of ten percent (10%) per annum on all sums so paid from the time of payment.

The damages statutes also provide:

23 §25. Breach of covenants in grants

The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty, or of quiet enjoyment, in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor, or, if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore, at the time of the grant, to the value of the whole property.
2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six (6) years; and,
3. Any expenses properly incurred by the covenantee in defending his possession.

23 §26. Breach of covenants against encumbrances

The detriment caused by the breach of a covenant against encumbrances in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishment of either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value, at the time of the grant, of the property affected by the breach, as compared with the whole; or, in the latter case, interest on a like amount.

### III. EXISTING TITLE EXAMINATION STANDARDS

#### A. Background

It is well known that "an ounce of prevention is worth a pound of cure." It is equally true that it is better for the lender to identify and have the mortgagor cure a title defect, or get the release of an encumbrance, before the lender makes the secured loan. The standards which are used by the examining attorney in examining a title are found in the Title Examination Standards ("Standards") which are adopted by the Oklahoma Bar Association House of Delegates.

The Standards are added to or modified each year through a three step approval process. A volunteer committee of attorneys known as the Title Examination Standards Committee ("Committee") works for about nine months of each year to research, draft, discuss and approve or reject proposed title examination standards. The Committee's recommendations are published in the Oklahoma Bar Journal in the fall before the annual meeting of the Real Property Section ("Section") of the Oklahoma Bar Association ("OBA") which is held at the same time as the annual OBA meeting. After the Section reviews and, as appropriate, rejects, modifies or accepts the proposed changed or new Standards, the OBA House of Delegates considers the proposals and approves them, if appropriate.

These Standards, as approved, represent the "standard of the profession" on the issues addressed in them. The Standards obviously do not discuss every possible issue, and, therefore, it



would be incorrect to assume that they are all-encompassing. The complete set of Standards is found in the Section's Handbook which is published each year, and in Chapter 1, to the Appendix to Title 16 of the Oklahoma Statutes Annotated.

These Standards are often incorporated by an express provision in the purchase contract and are thereby made part of the parties' agreement.

And as noted on page 2 of the Section's 1987 Title Examination Standards Handbook:

In 1982, the Oklahoma Supreme Court, speaking unanimously through Justice Lavender, gave its endorsement to the Title Examination Standards adopted by the Oklahoma Bar Association:

"While the Oklahoma Title Examination Standards are not binding upon this Court, by reason of the research and careful study prior to their adoption and by reason of their general acceptance among members of the bar of this state since their adoption, we deem such Title Examination Standards and the annotations cited in support thereof to be persuasive." Knowles v. Freeman, 649 P.2d 532, 535 (1982).

None of the numerous members of the bar whose efforts had contributed to the formulation of the standards could fail to feel rewarded by this judicial pat on the back.

B. Topics of Standards

The Standards cover a wide range of topics concerning the title examination process. The Table of Contents for the Standards is as follows:

# TITLE EXAMINATION STANDARDS TABLE OF CONTENTS

## CHAPTER 1. THE ABSTRACT

- 1.1 Recertification Unnecessary.
- 1.2 Transcripts of Court Proceedings.
- 1.3 Federal Court Certificates.
- 1.4 Unmatured Special Assessments.

## CHAPTER 2. THE TITLE EXAMINER

- 2.1 Examining Attorney's Attitude.
- 2.2 Reference to Title Standards.
- 2.3 Remedial Effect of Curative Legislation.

## CHAPTER 3. USE OF THE RECORD

- 3.1 Instruments by Strangers.
- 3.2 Personal and Intangible Taxes.
- \* 3.3 Affidavits

## CHAPTER 4. MARKETABLE TITLE

- 4.1 Marketable Title Defined.
- 4.2 Oil and Gas Leases.
- 4.3 Inheritance, Estate or Transfer Taxes.
- 4.4 Corrective Instruments.
- 4.5 Reference to Property in Probate Decrees.

## CHAPTER 5. NAME VARIANCES

- 5.1 Abbreviations and Idem Sonans.
- 5.2 Variance Between Signature or Body of Deed and Acknowledgment.
- 5.3 Recital of Identity.

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- 6.1 Defects in or Omission of Acknowledgments in Instrument of Record.
- 6.2 Omissions and Inconsistencies in Instruments and Acknowledgments.
- 6.3 Revenue Stamps.
- 6.4 Delivery; Delay in Recording.
- 6.5 Foreign Executions and Acknowledgments.

## CHAPTER 7. MARITAL INTERESTS

- 7.1 Marital Interests: Definition; Applicability of Standards; Bar or Presumption of Their Non-Existence.
- \* 7.2 Marital Interests and Marketable Title.

## CHAPTER 8. JOINT TENANCIES AND LIFE ESTATES

- \* 8.1 Termination of Joint Tenancies and Life Estates.
- 8.2 Direct Conveyances.
- 8.3 One Grantee.

## CHAPTER 9. CORPORATE CONVEYANCES

- 9.1 Name Variances.
- 9.2 Execution Defects.
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## CHAPTER 10. CONVEYANCES INVOLVING PARTNERSHIPS AND JOINT VENTURES

- 10.1 Conveyances to and by Partnerships.
- 10.2 Identity of Partners of Fictitious Name Partnership.
- 10.3 Identity of General Partners of Limited Partnership.
- 10.4 Conveyance of Real Property Held in Partnership Name.
- 10.5 Authority of One Partner to Act for All.
- 10.6 No Marital Rights in Partnership Real Property.
- 10.7 Assets of Partnership Not Subject to Execution for Debts of Individual Partners.
- 10.8 Conveyances To and By Joint Ventures.

## CHAPTER 11. TITLE THROUGH DECEDENTS' ESTATES

- 11.1 Conveyance to Estate.
- 11.2 Final Account—Tax Finding.

## CHAPTER 12. JUDGMENT LIENS, EXECUTION AND ATTACHMENT

- \* 12.1 Judgment Liens.
- 12.2 Lien of Alimony or Support Judgment.
- \* 12.3 Child Support Arrearage Liens
- \*\*12.4 Notice Requirements For Execution Sales
- \*\*12.5 Money Judgments Filed Against An Oil and Gas Leasehold Interest

## CHAPTER 13. MORTGAGES

- 13.1 Release by Quitclaim Deed.
- 13.2 Release of Joint Mortgage.
- 13.3 Release—Correction or Re-recorded Mortgage.
- 13.4 Errors in Releases.
- 13.5 Release of Assignment of Rents.
- 13.6 Deed from Mortgagor to Mortgagee.
- 13.7 Effect of Indefinite Reference to Mortgage.
- \* 13.8 Unenforceable Mortgages and Marketable Title.

## CHAPTER 14. MECHANICS', MATERIALMEN'S OR OTHER IMPROVEMENT LIENS

- 14.1 Mechanics' and Materialmen's Liens.

## CHAPTER 15. SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

- 15.1 Judicial Proceedings Presumed to Comply with Act.

## CHAPTER 16. MISCELLANEOUS

- 16.1 Non-jurisdictional Defects in Court Proceedings.
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- \* 17.1 The General Federal Tax Lien.
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#### CHAPTER 19. MARKETABLE RECORD TITLE ACT

- 19.1 Remedial Effect.
- 19.2 Requisites of Marketable Record Title.
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- 19.4 Matters Purporting to Divest.
- 19.5 Interests or Defects in the Thirty-year Chain.
- 19.6 Filing of Notice.
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#### EDITOR'S NOTE:

\* Revised on November 21, 1986.

\*\*Added on November 21, 1986.

- 19.8 Effect of Adverse Possession.
- 19.9 Effect of Recording Title Transaction During Thirty-Year Period.
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#### CHAPTER 23. CAPACITY TO CONVEY

- 23.1 Minority.
- 23.2 Mental Capacity to Convey.
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### C. Selected Standards

While all of the Standards are of interest to the title examiner, certain Standards are of particular importance to a lender. The Standards dealing with Marital Interests; Judgment Liens, Execution and Attachment; Mortgages; Mechanics', Materialmen's or Other Improvement Liens; and Simplification of Land Title Act, are set out herein in detail.

## 1. CHAPTER 7. MARITAL INTERESTS

### 7.1 Marital Interests: Definition; Applicability of Standards; Bar Or Presumption of Their Non-Existence

The term "Marital Interest", as used in this chapter, means the rights and restrictions placed by law upon an individual landowner's ability to convey or encumber the homestead and the protections afforded to the landowner's spouse therein.

Severed minerals cannot be impressed with homestead character and therefore, the standards contained in this chapter are inapplicable to instruments relating solely to previously severed mineral interests.

Marketability of Title is not impaired by the possibility of an outstanding marital interest in the spouse of any former owner whose title has passed by instrument or instruments which have been of record in the office of the county clerk of the county in which the property is located for not less than ten (10) years after the date of recording, where no legal action shall have been instituted during said ten (10) year period in any court of record, having jurisdiction, seeking to cancel, avoid or invalidate such instrument or instruments on the ground or grounds that the property constituted the homestead of the party or parties involved.

Authority: 16 O.S.A. § 4.

Comment: See Title Examination Standard 21.1 as to use of powers of attorney.

History: Adopted as A., October 31, 1947, 18 O.B.A.J. 1750 (1947); became 7 on renumbering in 1948, 19 O.B.A.J. 224 (1948). An amended standard, proposed by the 1970 Real Property Committee's Supplemental Report as Exhibit A, 41 O.B.A.J. 2676 (1970) was approved by the Real Property Section on December 3, 1970 and adopted by the House of Delegates on December 4, 1970, 42 O.B.A.J. 706 (1971). It substantially modifies the previous standard of the same number. The Comment was added on the recommendation of the 1983 Committee on Title Examination Standards, see Committee Report, 54 O.B.J. 2379 (1983), approval by Real Property Section, November 3, 1983 and adoption by House of Delegates, November 4, 1983.

The first two paragraphs were proposed as additions by the Report of the Title Examination Standards Committee, 55 O.B.J. 1871 (1984) and were approved by the Real Property Section, November 1, 1984 and adopted by the House of Delegates, November 2, 1984.

### 7.2 Marital Interests and Marketable Title

Except as otherwise provided in Standard 7.1, no deed, mortgage or other conveyance by an individual grantor shall be approved as sufficient to vest marketable title in the grantee unless:

(a) the body of the instrument contains the grantor's recitation to the effect that the individual grantor is unmarried;

or

(b) an affidavit made and recorded pursuant to 16 O.S.A. § 82 recites that the individual grantor was unmarried at the date of such conveyance;

or

(c) the individual grantor's spouse, identified as such in the body of the instrument, subscribes the instrument as a grantor;

or

(d) the grantee is the spouse of the individual grantor and that fact is recited by the grantor in the body of the instrument.

Comment: There is no question that an instrument relating to the homestead is void unless subscribed by both husband and wife. The word "void" should be emphasized. *Grenard v. McMahan*, 441 P.2d 950 (Okla. 1968). It is also settled that husband and wife must execute the same instrument, separately executed separate instruments being both void, *Thomas v. James*, 84 Okla. 91, 202 P. 499 (1921). Joinder by husband and wife 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.A. §§ 4, 6, 7 and Okla. Const. art. XII, § 2. It is essential that the distinction between a valid conveyance and a conveyance vesting marketable title be made when consulting this standard. See Title Examination Standard 4.1.

Another rather settled point is that one may not rely upon recitations either in the instrument or in a separate affidavit, to the effect that the property was not in fact homestead. Such a recitation by the grantor may be strong evidence when the issue is litigated, but cannot be relied upon for the purpose of establishing marketability, *Hensley v. Fletcher*, 172 Okla. 19, 44 P.2d 63 (1935).

Although the distinction may seem tenuous, the examiner may rely upon the grantor's recitation to the effect that he is unmarried. This may have its foundation in *Payne v. Allen*, 178 Okla. 328, 62 P.2d 1227 (1936), wherein the Court in its syllabus said, "the recitation . . . is conclusive . . . in the absence of proof to the contrary". (Emphasis supplied.) Perhaps the recitation of one's marital status is a recital of that person's identity, see Title Examination Standard 5.3. Or perhaps this recitation must be relied upon due to the lack of any alternative.

Caveat: The recitation may not be relied upon if, upon "proper inquiry", the purchaser could have determined otherwise, *Keel v. Jones*, 413 P.2d 549 (Okla. 1966).

It is not clear whether or not the spouse of the individual owner/grantor must be named in the granting clause as a grantor. Until the matter is clarified, the title examiner must so require. The case of *Melson v. Sneed*, 188 Okla. 388, 109 P.2d 509 (1940), so "assumed" but specifically did not so "decide".

Definitions of the word "subscribe" may be found in various sources, but the cases seem to uphold or invalidate instruments because husband and wife did or did not "sign" or "join", without distinguishing between the two words or reconciling them with the word "subscribe". See *Atkinson v. Barr*, 428 P.2d 316 (Okla. 1967); *Grenard v. McMahon*, 441 P.2d 950 (Okla. 1968).

One may convey to his spouse without the grantee/spouse's joinder as a grantor, but prudence would dictate that the grantor/spouse identify himself in the body of the deed as the spouse of the grantee/spouse. This would appear to be a reliable recital and comparable with a recital by a grantor that he is unmarried. See *Brooks v. Butler*, 184 Okla. 414, 87 P.2d 1902 (1939) and Title Examination Standard 5.3.

History: Adopted, November 4, 1983 by House of Delegates on recommendation of the 1983 Committee on Title Examination Standards, 54 O.B.J. 2379-80 (1983), and approval of the Real Property Section, November 3, 1983. Section (b) added to the Standard by recommendation in the Report of the 1986 Title Examination Standards Committee, 57 O.B.J. 2677-78 (1986), approval of the Real Property Section, November 20, 1986 and adoption by the House of Delegates, November 21, 1986. See "Comment" to Standard 3.3.

[See Attachment "A" setting forth 16 O.S. §4]



## 2. CHAPTER 12. JUDGMENT LIENS, EXECUTION AND ATTACHMENT

### 12.1 Judgment Liens

Judgments of courts of record of this state and of the United States rendered on or after October 1, 1978, shall be liens on the real estate of the judgment debtor within a county from and after the time a certified copy of such judgment has been filed in the office of the county clerk in that county, and no such judgment shall be a lien until it has been filed in this manner. The term "filed" as used in this title examination standard means "filed and properly indexed" against the judgment debtor against whose property a lien is sought to be impressed. Judgments for alimony are discussed in Title Examination Standard 12.2.

Authorities: 12 O.S.A. § 706, *Gilbreath v. Smith*, 50 Okla. 42, 150 P. 719 (1915); *Long Bell Lumber Co. v. Etter*, 123 Okla. 54, 251 P. 997 (1927); *Flanagan v. Clark*, 156 Okla. 230, 11 P.2d 176 (1932).

Comment: Judgments entered upon the judgment docket, in the office of the district court clerk in the county in which the land is located, prior to October 1, 1978, unless extinguished by release or operation of law, constitute liens upon non-exempt land and should not be disregarded, 1943 Okla. Sess. Laws Ch. 12 § 1.

In determining the effectiveness of the lien of a judgment filed in the office of the county clerk pursuant to 12 O.S.A. § 706, the examiner should take into consideration the law of the case in *Will Rogers Bank & Trust Company v. First National Bank of Tahlequah*, 710 P.2d 752 (Okla. 1985).

Caveat: The examining attorney should be aware of the possibility that a judgment which has been rendered but not filed with the county clerk might be filed with the county clerk and become a lien after the effective date of the opinion of the examiner but before the client acquires an interest in the property.

A judgment rendered in the small claims division of the district court after October 11, 1982, shall be a lien only from the date when a Statement of Judgment is filed of record in the office of the county clerk in the county in which the land is located and properly indexed against the judgment debtor upon whose real estate the lien is asserted, 12 O.S.A. § 1770. Between October 1, 1978 and October 11, 1982, a judgment rendered in the small claims division of the district court was not a lien until it was (1) entered upon the judgment docket in the office of the district court clerk of the county in which the judgment was rendered and (2) filed of record in the office of the county clerk in the county in which the land is located and properly indexed against the judgment debtor upon whose real estate the lien is asserted, 1977 Okla. Sess. Laws, Ch. 216 § 1; 1979 Okla. Sess. Laws, Ch. 83 § 1. Prior to October 1, 1978, a judgment rendered in the small claims division of the district court was a lien only from the date when entered upon the judgment docket in the office of the clerk of the district court in the county in which the land is located, 1975 Okla. Sess. Law, Ch. 15 §§ 1 & 2.

History: The Standard previously numbered "12.1" has been renumbered "12.2", see 1985 Report of the Title Examination Standards Committee, 56 O.B.J., 2535, 2537 (1985). This new Standard was proposed by the 1985 Report of the Title Examination Standards Committee, see Report, *supra*, 2537. It was approved by the Real Property Section, November 14, 1985 and adopted by the House of Delegates, November 15, 1986, 51 O.B.J. 5 (1986). The second paragraph of the "Comment" was added by the direction of the Chair of the Committee to call attention to the case cited therein which was decided after the adoption of this Standard. The 1986 Report of the Title Examination Standards Committee recommended the addition of the next to the last sentence of the first paragraph, 57 O.B.J. 2677, 2680 (1986). Typographic corrections were made from the floor and as corrected the amendment was approved by the Real Property Section, November 20, 1986 and adopted by the House of Delegates, November 21, 1986.

### 12.2 Lien of Alimony or Support Judgment

Judgment for alimony (whether payable in a single sum or periodic) shall be a lien upon the real property of the person against whom the alimony is awarded, if for a definite sum and if created by filing as provided under the judgment lien statute; except that there is no lien on that portion which is specifically designated by the Court as support unless (1) the Divorce Court's Order expressly makes it a lien on specifically described real property, (for constructive notice purposes the Order must be filed with the county clerk pursuant to 12 O.S.A. § 181), or (2) an arrearage is reduced to judgment and such judgment lien is then perfected by filing as provided under the judgment lien statute, (see Title Examination Standard 12.1).

Orders providing for the payment of temporary alimony and decrees for child support are not liens against the real property of the person ordered to make such payments, unless (1) the order expressly makes it a lien on specifically described real property (for constructive notice purposes the Order must be filed with the county clerk pursuant to 12 O.S.A. § 181), or (2) an arrearage is reduced to judgment and such judgment lien is then perfected by filing as provided under the judgment lien statute, (see Title Examination Standard 12.1).

Authorities: 12 O.S.A. §181, 706, 1222, 1278 & 1289; *Smith v. Citizens Nat'l Bank in Okmulgee*, 204 Okla. 586, 232 P.2d 618 (1951); *Barrett v. Barrett*, 207 Okla. 234, 249 P.2d 88 (1952); *Riffe Petroleum Co. v. Great Nat'l Corp., Inc.*, 614 P.2d 576 (Okla. 1980); *Bovasso v. Sample*, 649 P.2d 521 (Okla. 1982).

History: This Standard has been renumbered; it was previously Standard 12.1, 1985 Report of the Title Examination

Standards Committee, 56 O.B.J. 2535, 2537 (1985). The 1983 report of the Title Examination Standards Committee, 54 O.B.J. 2379, 2382 (1983) recommended substantial changes in this Standard. These changes were approved by the Real Property Section, November 3, 1983 and were adopted by the House of Delegates on November 4, 1983. The Section made some grammatical corrections prior to its approval.

### 12.3 Child Support Arrearage Liens

(A Standard has not yet been adopted for this subject.)

Comment: The title examiner should be aware of 12 O.S.A. § 1289.1, effective October 1, 1985, which provides that a lien for the amount of any arrearage in the child support payments provided in a judgment or order of a court or in an administrative order of the Oklahoma Department of Human Services may be had against the real property of the person required in such judgment or order to pay such support by the recording of such judgment or order in the office of the county clerk of any county in which such property may be situated.

As originally enacted effective October 1, 1985, this statute provided that the lien permitted thereby would be prior to all other liens, regardless of how or when created, except first mortgage liens, 1985 Okla. Sess. Laws, Ch. 297 § 20.

The statute was amended by the legislature, effective May 15, 1986, to provide that the lien permitted thereby "shall, from the time it is filed of record, become a lien" upon the real property, whether then owned or thereafter acquired, of the person required to pay such support, 1986 Okla. Sess. Laws, Ch. 176 § 4.

There does not appear to be a limitation statute applicable to this lien.

History: Time, after the passage of the cited statute, did not permit the development of a standard prior to the 1985 convention of the O.B.A. The Chair of the Title Examination Standards Committee directed the publication of the "Comment" to call attention to the problems inherent in this legislation until a standard can be developed and published. Again, time, after the 1986 amendment to 12 O.S.A. § 1289.1 was passed, did not permit the development of a standard before the 1986 convention of the O.B.A. The Title Examination Standards Committee recommended additions to the "Comment" in its 1986 Report, 57 O.B.J. 2677, 2680-81 (1986). The Recommendation was approved by the Real Property Section, November 20, 1986 and adopted by the House of Delegates, November 21, 1986.

### 12.4 Notice Requirements for Execution Sales

#### A. NOTICE OF SALE:

1. After March 22, 1985. As to all sheriff's sales of real property upon general or special execution occurring after March 22, 1985, efforts must have been taken which were reasonably calculated to afford personal notice of the sale to those parties who had an interest or estate in the property sold and whose actual whereabouts were known or could have been ascertained with due diligence. The record of the proceedings should reflect that such steps have been taken.

Authorities: 12 O.S.A. §§ 757, 764; *Cate v. Archon Oil Co., Inc.*, 695 P.2d 1352 (Okla. 1985); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 966, 77 L.Ed.2d 180 (1983).

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

2. After October 31, 1986. As to all sheriff's sales of real property upon general or special execution occurring after October 31, 1986, such sales shall be set aside on motion by the court to which the execution is returnable unless the party causing the execution to be issued:

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

- (1) The judgment debtor; and
- (2) Any holder of an interest in the property; and
- (3) All other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property;

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

- (b) Causes publication notice to be given in conformity with 12 O.S.A. § 764(2); and
- (c) Files in the case an affidavit of proof of mailing and of publication or posting; and
- (d) Causes such sale to be held at least thirty (30) days after the date of first publication of the notice required in 12 O.S.A. § 764(2).

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

Authorities: 12 O.S.A. § 764; *Cate v. Archon Oil Co., Inc.*, 695 P.2d 1352 (Okla. 1985); *Bomford v. Socony Mobil Oil Co.*, 440 P.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 966, 77 L.Ed.2d 180 (1983).

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

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



#### B. NOTICE OF CONFIRMATION OF SALE:

After October 31, 1986. As to all sheriff's sales of real property upon general or special execution, for which the writ of execution was returned after October 31, 1986, the party causing the execution to be issued shall:

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

- (a) The judgment debtor; and
- (b) Any holder of record of an interest in the property; and
- (c) All other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property;

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

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

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

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

Authorities: 12 O.S.A. § 765; *Bomford v. Socony Mobil Oil Co.*, 440 F.2d 713 (Okla. 1968); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1949); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 966, 77 L.Ed.2d 180 (1983).

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

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

#### 12.5 Money Judgments Filed Against An Oil and Gas Leasehold Interest

The interest vested in the owner of an oil and gas leasehold estate is not "real estate" within the meaning of 12 O.S.A. § 706; therefore, a money judgment filed in the office of the county clerk of the county in which the oil and gas leasehold is located does not create a lien on said oil and gas leasehold.

Authorities: *First National Bank of Healdton v. Dunlap*, Okla. 254 P. 729 (1927); *Hinds v. Phillips Petroleum Company*, 591 P. 2d 697 (Okla. 1979).

History: This Standard was recommended by the 1986 Report of the Title Examination Standards Committee, 57 O.B.J. 2677, 2682 (1986). It was approved by the Real Property Section, November 20, 1986 and adopted by the House of Delegates, November 21, 1986.

[See Attachments "B" - "I" setting forth 12 O.S. §§181, 706, 757, 764, 765, 1222, 1278 and 1289, respectively.]

### 3. CHAPTER 13. MORTGAGES

#### 13.1 Release by Quitclaim Deed

A quitclaim deed by a mortgagee to a mortgagor or subsequent owner is sufficient to release the mortgage unless the mortgagee specifically excepts the mortgage in the deed.

Authorities: See 37 Am. Jur. *Mortgages* § 1318; 46 O.S.A. § 16; *Anchor Stone & Materials Co. v. Pollok*, 344 P.2d 559 (Okla. 1959), *Garrett v. Reinhart*, 169 Okla. 249, 36 P.2d 884 (1934).

History: Adopted as (j.), September, 1946, 17 O.B.A.J. 1372 (1946); became 10 on numbering in 1946, *id.* at 1579 & 1751; became 22 on renumbering in 1948, 19 O.B.A.J. 223, 228 (1948); amended in December, 1959, 30 O.B.A.J. 2091, 2092 (1959).

#### 13.2 Release of Joint Mortgage

Prior to January 1, 1963, a mortgage running to two or more persons not shown on the face thereof to have distinct interests (and not shown to be trustees), and securing what appears to be a single debt, is a joint mortgage, and the mortgagees are joint obligees; therefore, payment to one alone satisfies the mortgage debt, and a release by one discharges the mortgage and bars the interest of the other mortgagees. Thus, a mortgage to "John Doe and Richard Doe," appearing to secure a single debt *prima facie*, is a joint mortgage, and a release by either mortgagee is sufficient.

After January 1, 1963, when 12A O.S.A. § 3-116 became effective, the standard will continue to be valid as to releases executed prior to that date and as to releases where either (1) the mortgage runs to two or more mortgagees in the alternative, that is, payable to "A or B," or (2) where the mortgage runs to "A and B" but on its face shows that it secures a debt payable to "A or B." However, when the mortgagees are not named in the alternative or when the mortgage recites the existence of a note payable to "A and B," the mortgage is payable to all of them and all must join in the release to discharge the mortgage.

Authorities: *Jens-Marie Oil Co. v. Rixse*, 72 Okl. 93, 178 P. 658 (1918); *Washington Nat'l Bank v. Rooney*, Kansas 96 Kan. 133, 150 P. 555 (1915); *Wright v. Ware*, 58 Ga. 150 (1877), (Cited in above Oklahoma case); R. & C. Patton, *Titles* § 310 (1938), P. 939 § 567 (1957) and cases cited; L. A. Jones, *Mortgages* § 1224 (8th ed. 1928); G. Thompson, *Real Property* § 4777 (1924); 36 Am. Jur. *Mortgages* § 424; 59 C.J.S. *Mortgages* § 458 (2); *Hill v. Breeden*, 53 Wyo. 125, 79 P.2d 482 (1938); 10 C.J.S. *Bills and Notes* § 194 n. 67 & § 455, nn. 42, 45 & 46; *Gill Equipment Co. v. Freedman*, 339 Mass. 303, 158 N.E. 2d 863 (1959); *Dewey v. Metropolitan Life Ins. Co.*, 256 Mass. 281, 152 N.E. 82 (1926).

Comment: The original standard states the common law rule incorporated in Negotiable Instrument Law of Oklahoma, 48 O.S.A. §§ 28 & 92. Those sections are repealed as of January 1, 1963, by the Uniform Commercial Code (12A O.S.A. § 10-102) and 12A O.S.A. § 3-116 controls after that date.

History: Adopted as 30., December 6, 1952, 24 O.B.A.J. 74 (1953). The 1962 Real Property Committee recommended the change indicated in the Comment, see Recommendation (7), 33 O.B.A.J. 2157-58 (1962) and Exhibit E, *id.* at 2179. The recommendation was approved by the Real Property Section and the House of Delegates, *id.* at 2470, November 29, 1962. Second paragraph of standard amended, December, 1964. The amended version printed as Proposal No. 9 of the 1964 Real Property Committee, 35 O.B.A.J. 2045 (1964) and see Exhibit F, *id.* at 2051. The Amendment approved, upon recommendation of the Real Property Section, by the House of Delegates, 36 O.B.A.J. 179, 182 (1965). *Gill Equipment case, supra*, added to "Authorities", December, 1964, as per Proposal No. 8 of 1964 Real Property Committee, 35 O.B.A.J. 2045 (1964) and approval, upon recommendation of Real Property Section, by House of Delegates, 36 O.B.A.J. 179, 182 (1965).

#### 13.3 Release—Correction or Re-recorded Mortgage

Each instrument of record evidencing a lien or encumbrance must be described in the release thereof; except, when an instrument acknowledging a lien or encumbrance appears followed by a similar instrument in which it is stated on the face of the instrument that the latter instrument is given to correct some defect in the former instrument, or when it appears on the face of the latter instrument that it is merely a re-recording of the former instrument, in other words, where the second instrument shows it evidences the identical lien as the first instrument, a release of the corrected instrument which does not specifically describe the other instrument is sufficient to discharge said lien or encumbrance.

History: Adopted as 12., November 16, 1946, 17 O.B.A.J. 1729 (1946), printed, *id.* at 1752 except that the language, "in which it is stated on the face of the instruments," read "on the face of which it is stated." Further, the word "instrument" was not used following the first "latter" and the punctuation differed; became 11 on renumbering in 1948, 19 O.B.A.J. 223, 225 (1948) at which time the rewording noted above was adopted.

Standard amended, December, 1964. Amended version printed as Proposal No. 10 of the 1964 Real Property Committee, 35 O.B.A.J. 2045-46 (1964) and see Exhibit G, *id.* at 2051. The amendment was approved, upon recommendation of the Real Property Section, by the House of Delegates, 36 O.B.A.J. 179, 182 (1965). The amendment substitutes the words, "a release of the corrected instrument", for the previous language, "a release of one of such instruments", in the last clause of the standard.

#### 13.4 Errors in Releases

Releases of encumbrances, leases, etc., which releases contain errors in recitals as to the date, date of recording, book and page of record or names or parties to the grants being released, should be considered sufficient if said releases give enough correct data to identify the grants being released with reasonable certainty.

History: Adopted as (e.), September, 1946, 17 O.B.A.J. 1372 (1946); became 5 on numbering in 1946, *id.* at 1578 & 1751; became 12 on renumbering in 1948, 19 O.B.A.J. 223, 225 (1948) at which time the current wording, "which releases contain errors," was substituted for the previous language, "containing errors."

#### 13.5 Release of Assignment of Rents

When an encumbrance appears followed by an assignment of rents showing that the latter is between the same parties and is a part of the transaction referred to in the encumbrance, a release of the encumbrance without any specific mention of the assignment of rents will be sufficient.

History: Adopted as (f.), September, 1946, 17 O.B.A.J. 1372 (1946); became 6 on numbering in 1946, *id.* at 1578 & 1751; became 13 on renumbering in 1948, 19 O.B.A.J. 223, 225 (1948).

#### 13.6 Deed from Mortgagor to Mortgagee

Deeds from mortgagors to mortgagees are subject to close scrutiny by the court if it should be asserted they were given as additional security; nevertheless, such deeds do not warrant the rejection of the title unless there is some affirmative showing in the title that they were given merely as additional security.

Authorities: *Messner v. Carroll*, 60 Okla. 90, 159 P. 362 (1916); *Starrist v. Longcor*, 179 Okl. 219, 65 P.2d 979 (1937); *Ware v. Tyer*, 199 Okl. 96, 182 P.2d 519 (1947); *Davis v. Moore* (Okla.) 387 P.2d 483 (1963).

History: Adopted as (c.), September, 1946, 17 O.B.A.J. 1372 (1946); became 3 on numbering in 1946, *id.* at 1578 & 1751; became 20 on renumbering in 1948, 19 O.B.A.J. 223, 227 (1948) at which time the *Messner* and *Longcor* cases, *supra*, were added as authority. The *Ware* and *Davis* cases, *supra*, added to "Authorities", December, 1964 as per Proposal No. 11 of the 1964 Real Property Committee, 35 O.B.A.J. 2045, 2046 (1964) and approval, upon recommendation of Real Property Section, by House of Delegates, 36 O.B.A.J. 179, 182 (1965).

#### 13.7 Effect of Indefinite Reference to Mortgage

After October 21, 1966, a reference to or recital of the existence of a prior mortgage in a deed or mortgage of record for one or more years, of itself, shall not put any person upon actual or constructive notice of the existence of such prior mortgage, nor shall such reference put any person upon inquiry in regard to such prior mortgage, unless the reference identifies the prior mortgage by book number and page number of the records of the county clerk where such mortgage is recorded.

Authorities: 46 O.S.A. §§ 201-204; P. Basye, *Clearing Land Titles* § 138 (2d ed. 1970)

Caveat: The curative statute forming the basis of this standard does not change the rule that a mortgage filed for record but not actually recorded, or erroneously indexed, is nevertheless constructive notice, even though the indefinite reference in a subsequent deed or mortgage is itself not notice.

History: Adopted December 2, 1965, Resolution No. 7, 1965 Real Property Committee, 36 O.B.A.J. 2094 (1965) & 2182 and Exhibit D, *id.* at 2098 & 2186. Approved by Real Property Section and adopted by House of Delegates, 37 O.B.A.J. 437 (1966).

#### 13.8 Unenforceable Mortgages And Marketable Title

A. No mortgage, contract for deed or deed of trust barred under the provisions of 46 O.S.A. § 301 shall constitute a defect in determining marketable record title.

B. A mortgage, contract for deed or deed of trust showing on its face that it secures a debt payable on demand shall be deemed to be due on the date of its execution. Thus, the date of execution shall be deemed to be "the date of the last maturing obligation" for the purpose of 46 O.S.A. § 301, unless an extension has been filed of record pursuant to such statute.

Authority: 12A O.S.A. §§ 3-122(2).

History: The Standard was recommended by the 1980 Title Examination Standards Committee, 51 O.B.J. 2726, 2727 (1980). It was approved by the Real Property Section, December 3, 1980 and adopted by the House of Delegates, December 5, 1980. The second paragraph of the Standard was recommended by the Report of the 1986 Title Examination Standards Committee, 57 O.B.J. 2677, 2682 (1986). It was approved by the Real Property Section, November 20, 1986 and adopted by the House of Delegates, November 21, 1986.

[See Attachments "J" - "O" setting forth 46 O.S. §§201-204, 301, 48 O.S. §§28 and 92 and 12A O.S. §§3-116, 3-122(2), respectively]

4. CHAPTER 14. MECHANICS', MATERIALMEN'S  
OR OTHER IMPROVEMENT LIENS

14.1 Mechanics' and Materialmen's Liens

Unreleased mechanics', materialmen's or other improvement liens filed on or after October 1, 1977, shall be disregarded after the lapse of one year from the filing of the lien if no action to foreclose or adjudicate the lien has been instituted. As to such liens filed prior to October 1, 1977, with a promissory note attached, the lien shall be disregarded after the lapse of one year from the maturity of the note if no action to foreclose or adjudicate the lien has been instituted. After October 1, 1977, no clerk is authorized to release these liens. A release of the lien should be required if an action to foreclose or adjudicate the lien was timely instituted.

Caveat: If suit to foreclose or adjudicate the lien is timely instituted, and the case is dismissed other than on the merits or if a judgment in favor of plaintiff is reversed, the plaintiff shall have one year from the date of dismissal or reversal to institute a new action, 12 O.S.A. § 100, *Newman v. Kirk*, 164 Okl 147, 23 P.2d 163 (1933).

History: Amended December 4, 1981. Amendment proposed by Report of the 1981 Title Examination Standards Committee, 52 O.B.J. 2723, 2725 (1981). Amendment approved by Real Property Section and adopted by House of Delegates, 53 O.B.J. 257, 258 (1982). The last sentence of the Standard and the Caveat were recommended by the Report of the 1983 Title Examination Standards Committee, 54 O.B.J. 2379, 2383 (1983). Recommendation approved by Real Property Section, November 3, 1983 and adopted by House of Delegates, November 4, 1983.

[See Attachment "P" setting forth 42 O.S. §172.]



## 5. CHAPTER 18. SIMPLIFICATION OF LAND TITLES ACT

### 18.1 Remedial Effect

The Simplification of Land Titles Act is remedial in character and should be relied upon with respect to such claims or imperfections of title as fall within its scope.

Authorities: *Lane v. Travelers Ins. Co.*, 230 Iowa 973, 299 N.W. 553 (1941); *Wichelman v. Messner*, 250 Minn. 88, 83 N.W.2d 800, 71 A.L.R. 2d 816 (1957); L. Simes & C. Taylor, *The Improvement of Conveyancing by Legislation* 271 (1960); P. Basye, *Clearing Land Titles* § 374 (1953), & § 182 (1962 Pock. Part); R. & C. Patton, *Titles* § 563 (2d ed. 1957); Ashabrunner, *An Introduction to Oklahoma's First Comprehensive Land Title Simplification Law*, 14 Okla. L. Rev. 516 (1961).

Comment: (a) The Simplification of Land Titles Act is similar to a recording statute. It is similar to the marketable title acts adopted in Michigan, Minnesota, Iowa and other states, which have been held constitutional on the grounds that the legislature which has the power to pass recording statutes originally, can amend or alter those statutes and require recording or the filing of a notice of claim to give notice of existing interests, and can extinguish claims of those who fail to re-record, *Lane v. Travelers Ins. Co.*, 230 Iowa 973, 299 N.W. 553 (1941), *Wichelman v. Messner*, 250 Minn. 88, 83 N.W. 2d 800, 71 A.L.R. 2d 816 (1957), L. Simes & C. Taylor, *The Improvement of Conveyancing by Legislation*, 271 (1960), P. Basye, *Clearing Land Titles*, § 374 (1953), & § 186 (2d ed. 1970), R. & C. Patton, *Titles*, § 563 (2d ed. 1957). In many situations the Simplification Act operates against defects made in the past by parties trying to complete the transaction correctly but who failed to do so in every detail. It will give effect to the intentions of the parties which were bona fide. Usually a full consideration was paid. To this extent the results will be those of a curative statute. A similar curative statute in Oklahoma, 16 O.S.A. § 4, has been held constitutional. *Saak v. Hicks*, 321 P.2d 425 (Okla. 1958). In a few situations the Act will operate against defects considered jurisdictional. In the past a statute of limitations with its requirements of adverse possession followed by a suit to quiet title was considered necessary to eliminate jurisdictional defects. The Simplification Act provides a new and additional method by invalidating the claim and creating marketable title unless claimant files notice of claim within the time provided in the act (or is in actual possession of the land). Since the Act protects the rights of claimants in actual possession as against a purchaser, the reasoning in *Williams vs. Bailey* 268 P.2d 868 (Okla. 1954), reading a requirement for adverse possession into the tax recording statute, is not applicable.

(b) Where a seller does not have a marketable title due to defects for which the Act affords protection to a "purchaser for value," and no notice has been filed as required by the Act, the attorney for the purchaser may advise the purchaser that a purchase for value will afford protection of the Act and that such a purchaser will acquire a valid and marketable title, provided no one is in possession claiming adversely to the seller.

History: The 1962 Real Property Committee Report recommended the adoption of this standard, see Recommendation (2), 33 O.B.A.J. 2157 (1962) and Exhibit B, *id.* at 2162. Approved by Real Property Section and House of Delegates, *id.* at 2469, November 29, 1962.

### 18.2 Protection Afforded by the Act

"The Simplification of Land Titles Act" protects any purchaser for value, with or without actual or constructive notice, from one claiming under a conveyance or decree recorded, or entered for ten (10) years or more in the county as against adverse claims arising out of:

(a) (1) Conveyances of incompetent persons unless the county or court records reflect a determination of incompetency or the appointment of a guardian, (2) corporate conveyances to an officer without authority, (3) conveyances executed under recorded power of attorney which has terminated for reasons not shown in the county records, (4) nondelivery of a conveyance;

(b) Guardian's, executor's, or administrator's conveyances approved or confirmed by the court as against (1) named wards, (2) the State of Oklahoma, or any other person claiming under the estate of a named decedent, the heirs, devisees, representatives, successors, assigns or creditors;

(c) Decrees of distribution or partition of a decedent's estate as against the estates of decedents, the heirs, devisees, successors, assigns or creditors. For decrees of distribution or partition which cover land in a county other than the county in which such decrees are entered and recorded, 16 O.S.A. § 62(c) (2) does not require that they also be recorded in the county in which the land is located;

(d) (1) Sheriff's or marshal's deeds executed pursuant to an order of court having jurisdiction over the land, (2) final judgments of courts determining and adjudicating ownership of land or partitioning same, (3) receiver's conveyances executed pursuant to an order of any court having jurisdiction, (4) trustee's conveyances referring to a trust agreement or named beneficiaries or indicating a trust where the agreement is not of record, (5) certificate tax deeds or resale tax deeds executed by the county treasurer, as against any person or the heirs, devisees, personal representatives, successors or assigns named as a defendant in the judgment preceding the sheriff's or marshal's deed, or determining and adjudicating ownership of or partitioning land, or settlor, trustee or beneficiary of a trust, and owners or claimants of land subject to tax deeds, unless claimant is in possession of the land, either personally or by a tenant, or files a notice of claim prior to such purchase, or within "one year from October 27, 1961, the effective date of 16 O.S.A. §§ 61-66 or from October 1, 1973,

the effective date of 16 O.S.A. § 62 as amended in 1973." The State of Oklahoma and its political subdivisions or a public service corporation or transmission company with facilities installed on, over, across or under the land are deemed to be in possession.

Authorities: 16 O.S.A. §§ 62 & 66.

History: The 1962 Real Property Committee Report recommended the adoption of this standard, see Recommendation (2), 33 O.B.A.J. 2157 (1962) and Exhibit B, *id.* at 2163. Approved by Real Property Section and House of Delegates, *id.* at 2469, November 29, 1962.

The 1980 Title Examination Standards Committee recommended changes in the Standard to reflect the broadening effect made in legislative changes of 1973 and 16 O.S.A. § 62, 51 O.B.J. 2726, 2728. The Real Property Section on December 3, 1980 made some changes in style but also deleted the word "county" before "court records" in (a) (1) and added the last sentence in (c). As amended the standard was approved by the Real Property Section, December 3, 1980 and adopted by the House of Delegates, December 5, 1980.

### 18.3 Purchaser for Value

"Purchaser for value" within the meaning of the Simplification of Land Titles Act, refers to one who has paid value in money or money's worth. It does not refer to a gift or transfer involving a nominal consideration.

Authorities: *Noe v. Smith*, 67 Okla. 211, 169 P. 1108, L.R.A. 1918C, 435 (1917); *Exchange Bank of Perry v. Nichols*, 196 Okla., 283, 164 P.2d 867 (1945).

Comment: The title acquired by a "purchaser for value" within the meaning of the Simplification of Land Titles Act will descend or may be devised or transferred without involving "value" and without loss of the benefits of the act.

History: The 1962 Real Property Committee Report recommended the adoption of this standard, see Recommendation (2), 33 O.B.A.J. 2157 (1962) and Exhibit B, *id.* at 2164. Approved by Real Property Section and House of Delegates, *id.* at 2469, November 29, 1962.

### 18.4 Conveyance of Record

"Conveyance of record" within the meaning of the Simplification of Land Titles Act includes a recorded warranty deed, deed, quit claim deed, mineral deed, mortgage, lease, oil and gas lease, contract of sale, easement, or right-of-way deed or agreement.

Authority: 16 O.S.A. § 62(a).

Comment: The definition of a conveyance of record should not be less than the definition of an interest in real estate in 16 O.S.A. § 62(a).

History: The 1962 Real Property Committee Report recommended the adoption of this standard, see Recommendation (2), 33 O.B.A.J. 2157 (1962) and Exhibit B, *id.* at 2162. Approved by Real Property Section and House of Delegates, *id.* at 2469, November 29, 1962.

### 18.5 Effective Date of the Act

The Simplification of Land Titles Act became effective October 27, 1961. Notices under the Act required to be filed within one (1) year from the effective date of the act must be filed for record in the county clerk's office in the county or counties where the land is situated on or before October 26, 1962.

Authorities: 16 O.S.A. §§ 62 & 63.

Comment: An adverse claimant may avoid the effects of the act by being in possession of the land, either personally or by tenant, or by filing the notice of claim required in Section 63, within ten years of the recording of the conveyance, or entry (or recording) of the decree under which the claim of valid and marketable title is to be made, or within one year of the effective date of the Act, whichever date occurs last. The filing of the notice of claim takes the interest or claim out from under the operation of the Act.

History: The 1962 Real Property Committee Report recommended the adoption of this standard, see Recommendation (2), 33 O.B.A.J. 2157 (1962) and Exhibit B, *id.* at 2164. Approved by Real Property Section and House of Delegates, *id.* at 2469, November 29, 1962.

### 18.6 Abstracting

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

(a) In sales by guardians, executors or administrators, the deed and order confirming the sale.

(b) In probate and partition proceedings in district court, the final decree and estate tax clearance unless not required by 58 O.S.A. § 912(3) or 68 O.S.A. § 815(d) or unless the estate tax lien is barred.

(c) In general jurisdiction court sales under execution, the petition and other instruments, if any, showing defendants sued, the service upon defendants or their entry of appearance, the judgment, the deed and the court order directing the delivery thereof.

(d) In general jurisdiction court partitions, or adjudications of ownership, the petition and other instruments, if any, showing defendants sued, the service upon defendants or their entry of appearance, the final judgment,

any deed on partition, and any court order directing the delivery thereof.

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

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

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

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

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

[See Attachment "Q" setting forth 12 O.S. §§61-66.]

#### IV. PENDING NEW OR REVISED TITLE EXAMINATION STANDARDS

The following topics are currently under consideration by the Committee:

<u>Subject</u>	<u>Chair &amp; Committee</u>	<u>Mo. to Report</u>
1. 12.3 - Child Support Arrearage Lien	M. Richie	Feb.
2. 8.1 - Joint Tenancy Affidavits	D. Rowland	Feb.
3. Chapter 9 - requirements for corporate execution of conveyances vis-a-vis new Title 18	L. Reynolds G. Clark	Mar.
4. Probate - waiver of certain pleadings and formalities with consent of heirs	G. Clark	Apr.
5. When Procedural or Remedial Statements are retroactive - Trustees Deeds	R. Cleverdon A. Lanford	Apr.
6. 3.1 - Affidavits re easements	J. Rarick D. Kouri	Apr.
7. FDIC - Evidence of authority of Public Corp. to act	R. Cleverdon D. Astle J. Rarick J. Lyon	May
8. 4.5 - Erroneous inclusion of non-owned land in instruments - not a cloud?	G. Clark	May
9. Types of conveyances which are placed of record other than in the office of a County Clerk	S. Schuller	May
10. 1.2 - Transcripts certified by Court Clerks (is there presently authority for?)	W. Gossett	May
11. 2.2 - Does language to be included in contracts of sale regarding use of title examination stds. need to be revised?	W. Gossett	May
12. 4.2 - Use of Certificates of Non-Development is Standard accurate expression of law?	S. McEachin	May
13. 16.4 - Review differences in application of lot split statute as between platted & unplatted lands	S. Schuller R. Cleverdon	Jun.
14. 4.1 & 19.2 - Review differences between definitions of Marketable Title in these 2 standards - should they be different?	S. McEachin	Jun.



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|--|--------------------------------|------|
| 15. Bankruptcy - Procedure for sale of Property in Plans                             | L. Reynolds<br>S. Schuller     | Jun. |
| 16. Effect of a lien of judgment against a partnership upon the assets of a partner? | R. Cleverdon                   | Jul. |
| 17. 1.3 - Federal Court Certificate  | K. Epperson                    |      |
| 18. Tax ReSale Deed  | R. Cleverdon                   | Jul. |
| 19. Lot Splits - 5 yr. limitation in Okla. Co.<br>(Review standard for accuracy)     | S. Schuller                    |      |
| 20. Ad valorem tax - 7 year certificate of abstractor                                |                                |      |
| 21. Disclaimer of homestead by both spouses  |                                |      |
| 22. Effect of amendment of recorded documents  | R. Cleverdon<br>(Draft report) |      |

A list of the Committee members is attached, along with this year's meeting dates.

OF THE OBA REAL PROPERTY SECTION

1.	January 24, 1987	Tulsa
2.	February 21, 1987	Oklahoma City
3.	March 21, 1987	Tulsa
4.	April 25, 1987	Oklahoma City
5.	May 23, 1987	Tulsa
6.	June 20, 1987	Oklahoma City
7.	July 18, 1987	Tulsa
8.	August 15, 1987	Oklahoma City
9.	September 19, 1987	Tulsa
	November 12, 1987	Annual Section Meeting Oklahoma City

All Oklahoma City meetings will be held at the Bar Center at 1901 N. Lincoln Boulevard.

All Tulsa meetings will be held at the Tulsa County Bar Association Building at 1446 S. Boston Avenue (at the NW corner of Fifteenth Street).

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

Notices of changes in meeting dates will be given as early as possible. You may contact the Committee Chairman, David P. Rowland, at 918-336-4550 for further information.

Also note the following O.B.A. Real Property seminar dates:

Advanced Title Examination - March 10, 1987 - Tulsa - (Evening)  
- March 17, 1987 - OKC - (Evening)

Annual Real Estate Survey - May 22, 1987 - OKC - (Day)  
- June 12, 1987 - Tulsa - (Day)

06 Feb 87

1987 TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY SECTION OF THE OKLAHOMA BAR ASSOCIATION

OFFICERS: CHAIRMAN: David P. Rowland, SECRETARY: Scott W. McEachin

Dale L. Astle	918	587-6621	Guaranty Abstract Co.	P. O. Box 3048	Tulsa	74101
Susan V. Atherton	918	743-1440	2727 East 15th		Tulsa	74104
Gary C. Clark	918	592-5555	808 Kennedy Building		Tulsa	74103
Richard Cleverdon	918	583-3145	Sixth Floor	114 East Eighth St.	Tulsa	74119
Mark W. Curnutte	918	256-7511	Logan, Lowry, Johnston	P. O. Box 558	Vinita	74301
Janice M. Dansby	405	236-8541	11th Floor, Colcord Building,	15 N. Robinson	Oklahoma City	73102
Stephen Wm. Davis	405	235-2591	1319 North Shartel		Oklahoma City	73103
Kraettli Q. Epperson	405	840-2470	Suite 200	6440 Avondale Dr.	Oklahoma City	73116
William A. Gossett	405	255-5600	Suite 300	Security Nat'l. Bank Bldg.	Duncan	73533
William A. Harrington	918	587-6601	2704 4th Nat'l Bk. Bldg.,	15 W. 6th Street	Tulsa	74119
Leslie S. Hauger, Jr.	918	664-5811	5001 South Fulton Ave.		Tulsa	74135
Dwight C. Kouri	918	584-4136	Pray, Walker, Jackman	Ninth Floor, ONEOK Plaza,	Tulsa	74103
Julie Lamprich	918	587-6621	Guaranty Abstract Co.	P. O. Box 3048	Tulsa	74101
Annelle S. Lanford	918	749-4411	3414 South Yale		Tulsa	74135
Jim A. Lyon	405	843-0461	Suite 235	2212 NW 50th Street	Oklahoma City	73112
Scott W. McEachin	918	584-4136	Pray, Walker, Jackman	Ninth Floor, ONEOK Plaza	Tulsa	74103
Linda Morrissey	918	584-2047	1448 S. Carson		Tulsa	74119
G. W. Newton	918	749-7721	Newton & O'Connor	5100 E. Skelly Dr., #610	Tulsa	74135
Robert Nichols	918	582-3222	800 Grantson Bldg.	111 West Fifth St.	Tulsa	74103
Dr. Joseph F. Rarick	405	325-4699	O.U. Law Center	300 Timberdell Road	Norman	73019
R. Louis Reynolds	918	583-7571	Norman, Wohlgemuth & Thompson,	909 Kennedy Building	Tulsa	74103
Henry Rheinberger	405	235-7742	1800 Mid-America Tower	20 N. Broadway	Oklahoma City	73102
Michael S. Richie	405	239-6781	1200 Fidelity Plaza	Robert S. Kerr at Robinson	Oklahoma City	73102
Joe S. Rolston III	405	728-2242	Suite 201	6525 N. Meridian	Oklahoma City	73116
David P. Rowland	918	336-4550	P. O. Box 1436		Bartlesville	74005
Stephen A. Schuller	918	584-1600	Suite 300	610 South Main St.	Tulsa	74119
Janelle H. Steltzen	918	749-5526	1150 E. 61st Street		Tulsa	74136

Honorary

Hon. Marian P. Opala	405	521-3839	Supreme Court, State Capitol Bldg.,	2300 N. Lincoln	Oklahoma City	73105
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## V. PENDING LEGISLATION

The following legislative bills are under current study by the Legislative Liaison Committee of the Real Property Section:

1. SB 66 -- By Pierce of the Senate -- Including in the definition of "mortgagor", as used in the law pertaining to the release of a mortgage by its holder, any subsequent purchaser of the mortgaged real estate; effective date Nov. 1, 1987; amending 46 O.S. 1981, Section 15.
2. SB 84 -- By Watson of Senate and Stacy of House -- Authorizing persons furnishing services, machinery, labor, supplies or money for joint account of leasehold working interest owners of oil and gas leasehold estates to obtain a lien on such leasehold; effective date Nov. 1, 1987; amending 42 O.S. Supp. 1986, Section 146. -- House Com. on Oil and Gas.
3. SB 240 -- Taylor -- Mortgages; defining date of sale; clarifying language; providing reasonable attorneys' fees; modifying notice requirements; providing mortgagor's right of redemption. Effective date. -- House General Order.
4. SB 270 -- Taliaferro -- Oil and gas; enacting Dormant Mineral Interests Act. -- House Com. on Rules.
5. SB 297 -- Dormant.
6. HB 1071 -- Lewis -- Providing certain public trusts with the power of eminent domain; effective date Nov. 1, 1987; amending 60 O.S. 1981, Section 176. -- Senate Com. on Judiciary and Retirement.
7. HB 1214 -- Linda Morrissey will monitor in conjunction with SB 84.
8. HB 1248 -- Gurley -- Modfying procedures for notification of creditors of deceased person by said person's personal representative; requiring final decrees of administration of estates shall find and order that proper notice to creditors has been made. -- Senate Com. on Judiciary and Retirement.
9. HB 1261 -- Davis (Frank) -- Modifying procedures for written notices of sale of real and personal property; effective date, Nov. 1, 1987; amending 12 O.S. Supp. 1986, Sections 757 and 764. -- Senate Com. on Judiciary and Retirement.

If you have questions or would like to help this Committee, contact either of the Co-Chairmen: Dick Cleverdon, Tulsa (918) 583-3145, or Kraettli Epperson, Oklahoma City (405) 840-2470.

VI. LIST OF EXHIBITS

	<u>Attachment</u>
16 O.S. §4	A
12 O.S. §181	B
12 O.S. §706	C
12 O.S. §757	D
12 O.S. §764	E
12 O.S. §765	F
12 O.S. §1222	G
12 O.S. §1278	H
12 O.S. §1289	I
46 O.S. §§201-204	J
46 O.S. §301	K
48 O.S. §28	L
48 O.S. §92	M
12A O.S. §§3-116	N
12A O.S. §§3-122(2)	O
42 O.S. §172	P
12 O.S. §§61-66	Q

**§ 4. Necessity of writing and signing—Veterans' loans—Homestead—Joinder of husband and wife—Effect of record for 10 years**

No deed, mortgage, or conveyance of real estate or any interest in real estate, other than a lease for a period not to exceed one (1) year, shall be valid unless in writing and subscribed by the grantors. No deed, mortgage, or contract affecting the homestead exempt by law, except a lease for a period not exceeding one (1) year, shall be valid unless in writing and subscribed by both husband and wife, if both are living and not divorced, or legally separated, except as otherwise provided for by law. Nonjoinder of the spouse shall not invalidate the purchase of a home with mortgage loan insurance furnished by the Veteran's Administration or written contracts and real estate mortgages executed by the spouse of a person who is certified by the United States Department of Defense to be a prisoner of war or missing in action. A deed affecting the homestead shall be valid without the signature of the spouse of the grantor, and the spouse shall be deemed to have consented thereto, when said deed has been recorded in the office of the county clerk of the county in which the real estate is located for a period of ten (10) years prior to a date six (6) months after May 25, 1953, and thereafter when the same shall have been so recorded for a period of ten (10) years, and no action shall have been instituted within said time in any court of record having jurisdiction seeking to cancel, avoid, or invalidate such deed by reason of the alleged homestead character of the real estate at the time of such conveyance.

R.L.1910, § 1143. Laws 1945, p. 40, § 1; Laws 1953, p. 64, § 1; Laws 1973, c. 24, § 1, eff. April 17, 1973; Laws 1983, c. 309, § 1, operative Oct. 1, 1983.

§ 181. Record of judgment in realty case

When any part of real property, the subject matter of an action, is situated in any other county or counties than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the office of the county clerk of such other county or counties, before it shall operate therein as notice. It shall operate as such notice, when recorded in the office of the county clerk, in the county where it is rendered.

Amended by Laws 1977, c. 207, § 2, eff. Oct. 1, 1977.

§ 706. Judgments as liens—Filing—Execution—Satisfaction and release

A. Judgments of courts of record of this state and of the United States shall be liens on the real estate of the judgment debtor within a county after a certified copy of such judgment has been filed in the office of the county clerk in that county. No judgment, whether rendered by a court of the state or of the United States, shall be a lien on the real estate of a judgment debtor in any county until it has been filed in this manner. Execution shall be issued only from the court in which the judgment is rendered.

B. The lien of any judgment when satisfied by payment or otherwise discharged shall be released by the court upon written motion by the judgment debtor. The motion shall be accompanied by an affidavit stating the grounds for the motion. Notice of the motion shall be mailed to the judgment creditor at the last-known address of the judgment creditor and the attorney of record of the judgment creditor by the person seeking the discharge. If there is no response or objection from the judgment creditor within twenty (20) days after the mailing of the notice, the court shall order the judgment released. If a judgment creditor files a release, the court clerk shall show the judgment released. When a judgment is released, the court clerk shall prepare a certificate of release for the judgment debtor on the form for certificate of release provided by the Administrative Director of the Courts. Instructions shall be printed on the certificate of release advising the judgment debtor to file the certificate of release in the office of the county clerk. The lien of the judgment shall be released once the certificate of release is filed in the office of the county clerk. The party filing the application for release shall pay all recording fees and other costs.

Amended by Laws 1978, c. 138, § 1, eff. Oct. 1, 1978; Laws 1983, c. 56, § 1, eff. Nov. 1, 1983.



§ 757. Notice of sale of chattels—Inventory for want of bidders

A. No goods or chattels levied upon by an officer pursuant to an execution issued by a court of record shall be sold unless the party causing the execution to be issued:

1. causes a written notice of sale describing the goods or chattels subject to sale and stating the date, time and place where the sale shall occur to be mailed, by first class mail, postage prepaid, to the judgment debtor; any holder of record of an interest in the property, and all other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the goods or chattels, at least ten (10) days prior to the date of the sale, if the names and actual addresses of such persons are known; and

2. causes public notice to be given of the date, time and place of sale, for at least ten (10) days before the day of sale. The notice shall state the name of any person having an interest in the property whose actual address is unknown, and shall designate the person or persons whose unknown successors are being notified. The notice shall be given by advertisement, published in some newspaper printed in the county, or, in case no newspaper be printed therein, by setting up advertisements in five public places in the county. Two advertisements shall be put up in the township where the sale is to be held; and

3. files in the case an affidavit of proof of mailing and of publication or posting.

B. When goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall affix a true and correct inventory of such goods and chattels to the execution, and the party causing such execution to be issued may thereupon sue out another writ of execution, directing the sale of the property levied upon as provided for in this section.

Amended by Laws 1986, c. 227, § 2, eff. Nov. 1, 1986.

§ 764. Notice of sale of realty

A. Lands and tenements taken on execution shall not be sold unless the party causing the execution to be issued:

1. causes a written notice of sale containing the legal description of the property and stating the date, time and place where the property will be sold to be mailed, by first class mail, postage prepaid, to the judgment debtor, any holder of interest in the property, and all other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property, at least ten (10) days prior to the date of the sale, if the names and addresses of such persons are known; and

2. causes public notice of the date, time and place of sale to be given by publication for two (2) successive weeks in a newspaper printed in the county, or in case no newspaper be printed in the county, in a newspaper of general circulation therein and by putting up an advertisement upon the courthouse door and in five other public places in the county, two of which shall be in the township where such lands and tenements lie; provided, that in counties now having a population of one hundred ten thousand (110,000) or more according to the last Federal Census, the advertisement shall be published in some newspaper published in the city or township where said lands and tenements lie or if there be no newspaper in such city or township then in some newspaper published in the county. The notice shall state the name of any person having an interest in the property whose actual address is unknown, and shall designate the person or persons whose unknown successors are being notified; and

3. files in the case an affidavit of proof of mailing and of publication or posting.

B. Such sale shall not be held less than thirty (30) days after the date of first publication of the notice required in paragraph 2 of subsection A of this section. All sales made after the effective date of this act<sup>1</sup> for which the provisions of subsection A of this section have not been complied with shall be set aside on motion by the court to which the execution is returnable.

Amended by Laws 1986, c. 227, § 3, eff. Nov. 1, 1986.

<sup>1</sup> Section 751 et seq. of this title.



§ 765. Confirmation of sale

A. Upon the return of any writ of execution for the satisfaction of which any lands or tenements have been sold, the party causing the execution to be issued shall:

1. cause a written notice of hearing on the confirmation of the sale to be mailed, by first class mail, postage prepaid, to the judgment debtor, any holder of record of an interest in the property, and all other persons of whom the party causing the execution to be issued has notice who claim a lien or any interest in the property, whose names and addresses are known, at least ten (10) days before the hearing on the confirmation of the sale, and if the name or address of any such person is unknown, shall cause a notice of the hearing on the confirmation of the sale to be published in a newspaper authorized by law to publish legal notices in each county in which the property is situated. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. The notice shall state the name of any person being so notified. The notice shall be published once at least ten (10) days prior to the date of the hearing on the notice of confirmation of the sale; and

2. files in the case an affidavit of proof of mailing and of publication, if publication is required.

B. If the court, after having carefully examined the proceedings of the officer, is satisfied that the sale has, in all respects, been made in conformity with the provisions of this article, the court shall direct the clerk to make an entry on the journal that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed for such lands and tenements; and the officer, on making such sale, shall deposit the purchase money with the clerk of the court from which said writ of execution issued, where same shall remain until the court shall have examined his proceedings as aforesaid, when said clerk of the court shall pay the same to the person entitled thereto, agreeable to the order of the court.

Amended by Laws 1986, c. 227, § 4, eff. Nov. 1, 1986.

12 § 1222

CIVIL PROCEDURE

Ch.

§ 1222. Subsequent attachment

Where property is under attachment, it shall be attached under subsequent orders, as follows:

First, if it be real property, it shall be attached in the manner prescribed in Section 4820.<sup>1</sup>

Second, if it be personal property, it shall be attached as the hands of an officer, and subject to any previous attachment.

Third, if the same person or corporation be made a garnishee, a copy of the order and notice shall be left with him in the manner prescribed in Section 4841.<sup>2</sup> R.L.1910, § 4843.

<sup>1</sup> Section 1159 of this title.

<sup>2</sup> Section 1191 of this title.

Library references: Attachment § 20; C.J.S. Attachment § 200.

§ 1278. Disposition of property—Restoration of wife's maiden name—Alimony

When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires. The court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed-of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the court shall think reasonable, having due regard to the value of such property at the time of the divorce. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the court shall make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof. The court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the marriage where custody resides with that spouse.

Amended by Laws 1975, c. 350, § 1, eff. Oct. 1, 1975; Laws 1976, c. 154, § 1; Laws 1985, c. 39, § 1, emerg. eff. April 19, 1985.

§ 1289. Alimony payments—Termination—Payments pertaining to support and division of property—Cohabitation by former spouse

A. In any divorce decree which provides for periodic alimony payments, the court shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of each payment which is designated as support and the dollar amount of all or a portion of the payment which is a payment pertaining to a division of property. The court shall specify in the decree that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to subsequent modification by the court making the award.

B. The court shall also provide in the divorce decree that upon the death or remarriage of the recipient, the payments for support, if not already accrued, shall terminate. The court shall order the judgment for the payment of support to be terminated, and the lien released upon the presentation of proper proof of death of the recipient unless a proper claim is made for any amount of past-due support payments by an executor, administrator, or heir within ninety (90) days from the date of death of the recipient. Upon proper application the court shall order payment of support terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable, provided the recipient commences an action for such determination, within ninety (90) days of the date of such remarriage.

C. An order for continuing the payments of support shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments.

D. The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the court shall have jurisdiction to reduce or terminate future support payments upon proof of substantial change of circumstances of either party to the divorce relating to need for support or ability to support. As used in this subsection, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law, or not necessarily meeting all the standards of a common-law marriage. The petitioner shall make application for modification and shall follow notification procedures used in other divorce decree modification actions. The court that entered the divorce decree shall have jurisdiction over the modification application.

E. Except as otherwise provided in subsection D of this section, the provisions of any divorce decree pertaining to the payment of support may be modified upon proof of changed circumstances relating to the need for support or ability to support which are substantial and continuing so as to make the terms of the decree unreasonable to either party. Only those installments accruing subsequent to the motion for modification may be modified. The provisions of this subsection shall have retrospective and prospective application with regards to modifications for the purpose of obtaining support or payments pertaining to a division of property on divorce decrees which become final after June 26, 1981, and pursuant to the federal Uniformed Services Former Spouse's Protection Act (PL 97-252).<sup>1</sup>

Laws 1965, c. 344, § 1. Amended by Laws 1967, c. 328, § 1; Laws 1968, c. 161, § 1, emerg. eff. April 11, 1968; Laws 1976, c. 61, § 1; Laws 1979, c. 278, § 1; Laws 1983, c. 86, § 1, operative Nov. 1, 1983; Laws 1985, c. 188, § 1, eff. Nov. 1, 1985.

<sup>1</sup> 10 U.S.C.A. §§ 1071, 1076, 1086, 1401 note, 1408 note, 1447, 1448, 1450.

### § 201. Citation

This act shall be known as the "Indefinite Reference to Mortgages Act".

Laws 1965, c. 122, § 1.

#### Historical Note

##### Title of Act:

An Act relating to mortgages; limiting the effect, as notice, of the indefinite reference to a mortgage in a subsequent deed or mortgage; and containing a saving clause with respect to the indefinite reference to mortgages in deeds or mortgages now of record. Laws 1965, c. 122.

#### Library References

Vendor and Purchaser Ⓒ230(3). C.J.S. Vendor and Purchaser § 332.

### § 202. Indefinite reference to mortgage in subsequent deed or mortgage—Effect

No indefinite reference to a mortgage in any subsequent deed or mortgage shall constitute notice of any rights of the mortgagee under such mortgage, nor put any person on inquiry with respect thereto, after the expiration of one year from the date of the recording of the deed or mortgage containing such indefinite reference.

Laws 1965, c. 122, § 2.

### § 203. Indefinite reference defined

For the purpose of this act, a mortgage shall be considered as indefinitely referred to if unrecorded or if the book number and

the page number of the records of the county clerk where such mortgage is recorded are not given in the deed or mortgage containing such reference.

Laws 1965, c. 122, § 3.

### § 204. Application

This act shall apply to indefinite references to mortgages in deeds and mortgages made before the effective date of this act as well as to those made thereafter, except that this act shall not be effective as to mortgages indefinitely referred to in deeds or mortgages now of record until one year from the effective date of this act.

Laws 1965, c. 122, § 4.



§ 301. Foreclosure—Limitations—Cessation of lien—Extension agreements—  
Notice—Record marketable title—Application of act

A. No suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust shall be had or maintained after the expiration of ten (10) years from the date the last maturing obligation secured by such mortgage, contract for deed or deed of trust becomes due as set out therein, and such mortgage, contract for deed or deed of trust shall cease to be a lien, unless the holder of such mortgage, contract for deed or deed of trust either:

1. Before October 1, 1981, has filed or caused to be filed of record a written notice of extension as provided in paragraph 1 of subsection C of this section; or

2. After October 1, 1981, and within the above described ten-year period, files or causes to be filed of record a written notice of extension as provided in paragraph 1 of subsection C of this section.

B. No suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust filed of record in the office of the county clerk, in which the due date of the last maturing obligation secured by such mortgage, contract for deed or deed of trust cannot be ascertained from the written terms thereof, shall be had or maintained after the expiration of thirty (30) years from the date of recording of the mortgage, contract for deed or deed of trust, and said mortgage, contract for deed or deed of trust shall cease to be a lien, unless the holder of such mortgage, contract for deed or deed of trust either:

1. Before October 1, 1981, has filed or caused to be filed of record a written notice of maturity date as provided in paragraph 2 of subsection C of this section; or

2. After October 1, 1981, and within the above described thirty-year period, files or causes to be filed of record a written notice of maturity date as provided in paragraph 2 of subsection C of this section.

C. 1. The notice of extension required under subsection A of this section, to be effective for the purpose of this act, shall show the date of recording, the book and page and the legal description of the property covered by the mortgage, contract for deed or deed of trust and the time for which the payment of the obligation secured thereby is extended, and shall be duly verified by oath and acknowledged by the holder of the mortgage, contract for deed or deed of trust.

2. The notice of maturity date required under subsection B of this section, to be effective for the purpose of this act, shall show the date of recording, the book and

page and the legal description of the property covered by the mortgage, contract for deed or deed of trust and the maturity date to which the last maturing obligation secured thereby is extended, and shall be duly verified by oath and acknowledged by the holder of the mortgage, contract for deed or deed of trust.

D. Any mortgage, contract for deed or deed of trust barred under this act shall not be a defect in determining marketable record title.

E. The notice required to be filed of record by this act must be recorded in the office of the county clerk of the county or counties where the mortgage is recorded.

F. Nothing contained herein shall be construed to revive the lien of any mortgage, contract for deed or deed of trust which has expired by limitation before the effective date of this act.

Added by Laws 1980, c. 294, § 1, eff. Oct. 1, 1980.

§ 28. Instrument payable to order.—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for a time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty. R.L.1910, § 4058.

§ 92. Indorsement by several payees not partners.—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing had authority to indorse for the others. R.L.1910, § 4091.

**§ 3-116. Instruments Payable to Two or More Persons**

An instrument payable to the order of two or more persons

- (a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;
- (b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them. Laws 1961, p. 105, § 3-116.

Art. 3

COMMERCIAL PAPER 12A § 3-122

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Cross Reference:  
Section 3-502.

Definitional Cross References:

"Acceptance". Section 3-410.  
"Account". Section 4-104.  
"Bank". Section 1-201.  
"Draft". Section 3-104.  
"Instrument". Section 3-102.  
"Note". Section 3-104.  
"Order". Section 3-102.

Cross References

Delay of presentment or notice of dishonor, discharge of parties, see section 3-502 of this title.

Notes of Decisions

Library references

Banks and Banking §144.  
C.J.S. Banks and Banking § 225.

1. Failure of bank

Failure to present note payable at bank for payment when due does not relieve maker from liability in case bank fails. *Cashion Gin Co. v. Reisch*, 144 Okl. 169, 289 P. 701 (1930).

§ 3-122. Accrual of Cause of Action

- (1) A cause of action against a maker or an acceptor accrues
  - (a) in the case of a time instrument on the day after maturity;
  - (b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.
- (2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.
- (3) A cause of action against a drawer of a draft or an indorser of an instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.
- (4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment
  - (a) in the case of a maker of a demand note, from the date of demand;
  - (b) in all other cases from the date of accrual of the cause of action. Laws 1961, p. 106, § 3-122.

§ 172.    Enforcement by civil action—Limitations—Practice,  
                 pleading and proceeding—Amendment of lien  
                 statement

Any lien provided for by this chapter may be enforced by civil action in the district court of the county in which the land is situated, and such action shall be brought within one (1) year from the time of the filing of said lien with the county clerk. The practice, pleading and proceedings in such action shall conform to the rules prescribed by the code of civil procedure as far as the same may be applicable; and in case of action brought, any lien statement may be amended by leave of court in furtherance of justice as pleadings may be in any matter, except as to the amount claimed.

R.L.1910, § 3873. Laws 1935, p. 226, § 1; Laws 1977, c. 207, § 13, eff. Oct. 1, 1977.

<sup>1</sup> R.L.1910, c. 44, now incorporated in this title and title 61.

## BONDS AND SURETIES

### § 61. Justification of surety

A ministerial officer whose duty it is to take security in any undertaking provided for by this code or by other statutes shall require the person offered as surety to make an affidavit of his qualifications, which affidavit may be made before such officer, and shall be indorsed upon or attached to the undertaking. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subject for taking insufficient security. R.L.1910, § 5342.



**§ 62. Qualifications of surety**

The surety in every undertaking provided for by this code or other statutes unless a surety company, must be a resident of this State and worth double the sum to be secured, over and above all exemptions, debts and liabilities. Where there are two or more sureties in the same undertaking they must in the aggregate have the qualifications prescribed in this section. R.L.1910, § 5343.

**§ 63. Real estate mortgage as bond**

In every instance in this State where bond, indemnity or guaranty is required, a first mortgage upon improved real estate within this State shall be accepted: Provided, that the amount of such bond, guaranty or indemnity shall not exceed fifty per cent of the reasonable valuation of such improved real estate, exclusive of all buildings thereon; Provided, Further, that where the amount of such bond, guaranty or indemnity shall exceed fifty per cent of the reasonable valuation of such improved real estate, exclusive of all buildings, then such first mortgage shall be accepted to the extent of such fifty per cent valuation. R.L.1910, § 5344.

Library references: Principal and Surety ⇐15; C.J.S. Principal and Surety § 41.

**§ 64. Valuation of real estate**

The officer, whose duty it is to accept and approve such bond, guaranty or indemnity shall require the affidavits of two freeholders versed in land values in the community where such real estate is located to the value of such real estate. Said officer shall have the authority to administer the oaths and take said affidavits. R.L.1910, § 5345.

Library references: Principal and Surety ⇐15; C.J.S. Principal and Surety § 41.

**§ 65. False valuation—Penalty**

Any person wilfully making a false affidavit as to the value of any such real estate shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false, shall be guilty of subornation of perjury and punished accordingly. R.L.1910, § 5346.

**§ 66. Action by state or state department—Bond not required—Payment of costs**

Whenever an action is filed in any of the courts in the State of Oklahoma by the State of Oklahoma, or by direction of any de-

partment of the State of Oklahoma, no bond, including cost, replevin, attachment, garnishment, re-delivery, injunction bonds, appeal bonds or other obligations of security shall be required from the State of Oklahoma or from any party acting under the direction aforesaid, either to prosecute said suit, answer or appeal same. In case of an adverse decision, such costs as by law are taxable against the State of Oklahoma, or against the party acting by its direction, as aforesaid, shall be paid out of the contingent fund of the department under whose direction the proceedings were instituted. Laws 1923, ch. 203, p. 354, § 1.