TITLE STANDARDS AFFECTING MORTGAGE LENDERS:

UPDATE ON OKLAHOMA TITLE

EXAMINATION STANDARDS:

REVISIONS OF 1994 (NOV. 5, 1993) AND PROPOSED REVISIONS OF 1995 (NOV. 1994)

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(Updated 6-6-94)

I. BACKGROUND AND AUTHORITY OF STANDARDS

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

In Oklahoma, new and revised Standards are proposed annually by the Title Examination Standards Committee ("Committee") to the OBA Real Property Section ("Section") at the Section's annual meeting, usually held in November of each year. Immediately thereafter, the Section forwards to the OBA House of Delegates ("House"), for the House's consideration and approval, any new or revised Standards which were approved at the Section's meeting.

These Oklahoma Standards have received support from the Oklahoma Supreme Court which has held:

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

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

The Standards become binding between the parties:

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

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

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

(2) IF proceeds from the sale of oil or gas production are being held up due to an allegedly unmarketable title [52 O.S. 570.10.D.2a; also see: Hull, et al. v. Sun Refining, 789 P.2d 1272 (Okla. 1990) ("Marketable title is determined under §540 [now §5710.10] pursuant to the Oklahoma Bar Association's title examination standards.")].

In these instances, the parties might be subject to suits to specifically enforce or to rescind their contracts, or to seek damages, as appropriate, with the Court's decision being based on the "marketability" of title as measured, in part, by the Standards.

The following Revised Standards and New Standard were considered and approved by the Committee during the January-September 1993 period. The proposed changes and additions were published in the Oklahoma Bar Journal on October 30, 1993, 64 OBJ 3249. These Standards were considered by the Section at its annual meeting on November 4, 1993 and were approved by the Section as proposed, with the published proposed revision to 12.1 JUDGMENT LIENS being corrected at the Section meeting to insert in part B four words that were mistakenly omitted from the proposed version published in the Oklahoma Bar Journal (i.e., "in a federal court"). They were also considered by the OBA House of Delegates on November 5, 1993 and approved. Once these Standards were adopted by the House, they were immediately effective. A notice of the House's approval of the proposed new and revised Standards was published in the Oklahoma Bar Journal on November 5, 1993 in volume 64 at page 3409.

The new TES Handbook, containing the revised version of these Standards, was printed and mailed to all 1993 Section members on January 14, 1994.

The three chapters on "Proposed Revised/New Standards for 1995" show the pending and the Committee-approved standards which will be considered by the Section and the House of Delegates at their November 1994 annual meetings.

II. EXAMINING ATTORNEY'S RESPONSIBILITIES

Patton on Titles has a good discussion of the title examiner's duties in Sections 45 and 52:

> §45. Importance of Title Examination
>
> In distinction from the abstracter's duty to search the records and to merely report the facts as he finds them, it is the province of the attorney to examine these facts either from the abstract or, using it as a guide, from the records themselves, and to formulate a legal opinion thereon. He is therefore commonly called a title examiner (in distinction from a searcher or abstracter of the records, though, if he is a lawyer admitted to practice in the state, he may be both abstracter and examiner). Having received an abstract which he considers to be "good and sufficient," or to otherwise satisfy his client's contract upon the subject, the latter is now ready to examine the title. This is of great importance, for the reason that, aside from covenants of warranty, all questions of title after acceptance of conveyance are at the risk of the vendee. His only protection against defects is to investigate the title beforehand, or to look to the express warranties of his vendor's conveyance afterwards. He wishes to know, therefore, before completing his purchase, that the title is not only free from defects which would be covered by the warranties of his deed, but also free from those minor defects for which he would have no recourse but which would make it unmarketable on a resale.
>
> §52. Responsibility of Examining Attorney
>
> Though an attorney must be held to have undertaken to use a reasonable degree of care or skill, and to possess to a reasonable extent the knowledge requisite to a proper performance of his duties, and will be held liable to his client for injury resulting as a proximate consequent from the want of such knowledge and skill, or from a failure to exercise such care, he is not a guarantor of the titles which he approves and is only liable for negligence or misconduct in their examination. He cannot be held for damages resulting from an opinion rendered in good faith which proves to be erroneous either as to the law or as to its application to the particular facts involved. He is of course liable for injury arising from his negligence, such as omitting in his report to a purchaser liens shown in the abstract, or in certifying in his report to others as to the subsistence of a lien which has ceased to exist or which never attached. But, unless there are circumstances to take the case out of the general rule, his liability, like that of an abstracter, extends only to those by whom he has been employed.

> Aside however from the financial responsibility to a client for any loss resulting from negligence or lack or knowledge and skill, a title examiner feels the same personal responsibility for making a complete and accurate title report which is implicit in the relationship of a lawyer and his client. As in almost no other field of the practice of law, carefulness is the prime requisite. Knowledge of the subject is a close second. Skill then comes with experience. Knowledge alone is not substitute for the latter, the same in title examination as in playing a musical instrument, speaking a foreign language, or using new tools and machines. Given equal knowledge of real property law, an attorney well versed in trial procedure may be as inadequately equipped to examine a title as may an examiner to conduct a jury trial. The two lines of practice require different types of skill; and the latter, in both cases, is acquired mainly from experience.
>
> In addition to studying the matters contained infra relating to title in his own state and supra in relation to methods of examination, each reader is urged to supplement his familiarity with this text by reading any local work which may have been prepared for his state and any list of standards which have been adopted by the lawyers of his state or district. He should procure an index of the curative and limitation acts applicable to titles in his state, either a published list where that is possible, or one prepared and kept up by himself. Unless the examiner or student has already had a course in surveying or has otherwise acquired a considerable familiarity with drafting and construing land descriptions, he should give particular attention to Chapter 4 hereof and should acquire from engineering literature or from a surveyor at least a moderate familiarity with surveying terms, drafting terms and instruments (not necessarily transits and levels, but steel tapes, chains, protractors, scales, etc.) (emphasis added)

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

> In Oklahoma, an action for malpractice, whether medical or legal, though based on a contract of employment, is an action in tort and is governed by the two-year statute of limitations at 12 O.S.A. 1981, § 95 Third. (*Seanor v. Browne*, 154 Okl. 222, 7 P.2d 627 (1932)). This limitation period begins to run from the date the negligent act occurred or from the date the plaintiff should have known of the act complained of. (*McCarroll v. Doctors General Hospital*, 664 P.2d 382 (Okl. 1983)). The period may be tolled, however, by concealment by the attorney of the negligent acts which injured the client. This Court has

previously held, in *Kansas City Life Insurance Co. v. Nipper*, 174 Okl. 634, 51 P.2d 741 (1935) that:

> One relying on fraudulent concealment to toll the statute of limitation must not only show that he did not know facts constituting a cause of action, but that he exercised reasonable diligence to ascertain such facts.

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

However, in 1993 the Court clarified their holding in Funnell by saying:

> Appellees argue the instant case should be controlled by *Funnell v. Jones*, 737 P.2d 105 (Okla. 1985), *cert. denied*, 484 U.S. 853, 108 S.Ct. 158, 98 L.Ed.2d 113 (1987), a case where we applied the two year tort limitation period to a legal malpractice case. Appellees' reliance on *Funnell* is misplaced. The opinion in *Funnell* gives no indication a separate contract theory was alleged there or that the plaintiffs there attempted to rely on the three year limitation period for oral contracts. Thus, our statement in *Funnell* to the effect an action for malpractice, whether legal or medical, though based on a contract of employment, is an action in tort, must be taken in the context it was made, to wit: determining whether the two year limitation for torts was tolled based on allegations of fraudulent concealment on the part of defendant attorneys and that no acts alleged against defendants occurred within the two years immediately preceding filing of the lawsuit. *Id.* at 107-108. We did not decide in *Funnell* a proceeding against a lawyer or law firm is limited *only* to a proceeding based in tort no matter what the allegations of a petition brought against the lawyer or law firm. We have never so held and, in fact, to so rule would be tantamount to treating lawyers differently than we have treated other professions, something we refuse to do.
>
> We have held a party may bring a claim based in both tort and contract against a professional and that such action may arise from the same set of facts. *Flint Ridge Development Company, Inc. v. Benham-Blair and Affiliates, Inc.*, 775 P.2d 797, 799-801 (Okla. 1989) (architectural, engineering and construction supervision services). In essence, the holding of *Flint Ridge* is *if* the alleged contract of employment merely incorporates by reference or by implication a general standard of skill or care

> which a defendant would be bound independent of the contract a tort case is presented governed by the tort limitation period. *Id.* at 799-801. However, where the parties have spelled out the performance promised by defendant and defendant commits to the performance without reference to and irrespective of any general standard, a contract theory would be viable, regardless of any negligence on the part of a professional defendant. *Id.* As pertinent here, the specific promise alleged or reasonably inferred from the petition and documents attached thereto was to search the records of the County Clerk for an approximate nine (9) year period and report those records on file affecting the title for loan purposes. Simply, if this was the promised obligation a contractual theory of liability is appropriate which is governed by the three year limitation period applicable to oral contracts.

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

III. REVISED STANDARDS FOR 1994 (Nov. 5, 1993)

A. 12.1 JUDGMENT LIENS

1. Revised Standard

12.1 JUDGMENT LIENS

A. JUDGMENTS OF STATE AND FEDERAL COURTS (EXCEPT JUDGMENTS PURSUANT TO THE FEDERAL DEBT COLLECTION PROCEDURES ACT OF 1990).

A judgment lien, pursuant to a judgment of a court of record of this state (except judgments pursuant to the Small Claims Procedure Act which are discussed in Paragraph (C) below, and except judgments for alimony which are discussed in Title Examination Standard 12.2) or of the United States (except those subject to the Federal Debt Collection Procedures Act of 1990, 28 U.S.C.A. §3001 et seq., which are discussed in paragraph (B) below),

1. Can be created on or after October 1, 1993, on the real estate of the judgment debtor within a county by filing a Statement of Judgment in the office of the county clerk in that county;

2. Could be created on or after June 1, 1991, and prior to October 1, 1993, on the real estate of the judgment debtor within a county by filing an affidavit of judgment, with a certified copy of such judgment attached to such affidavit of judgment and incorporated by reference in such affidavit of judgment, in the office of the county clerk in that county;

3. Could be created on or after January 1, 1991, and prior to June 1, 1991, on the real estate of the judgment debtor within a county by filing a certified copy of such judgment in the office of the county clerk in that county;

4. Could be created on or after November 1, 1988, and prior to January 1, 1991, on the real estate of the judgment debtor within a county by filing an affidavit of judgment, with a certified copy of such judgment attached to such affidavit of judgment and incorporated by reference in such affidavit of judgment, in the office of the county clerk in that county;

5. Could be created on or after October 1, 1978, and prior to November 1, 1988, on the real estate of the judgment debtor within a county by filing a certified copy of such judgment in the office of the county clerk in that county; and

6. Could be created, as to judgments of state courts of record, prior to October 1, 1978, (a) on the real estate of the judgment debtor within the county in which the judgment was rendered by entry of such judgment upon the judgment docket

in the office of the district court clerk in that county, and (b) on the real estate of the judgment debtor within any other county in the state by filing a certified copy of such judgment with, and entry of the judgment upon the judgment docket of, the district court clerk in that county.

Note: A federal court judgment, for which a lien was sought to be created prior to October 1, 1978, was not a lien on the real estate of the judgment debtor within any county in the state, except in all counties where a permanent record of such judgment of the United States Court is kept open to the public, until a certified copy of such judgment had been filed and docketed in the office of the state district court clerk of the county in which the real estate is located.

B. *JUDGMENTS PURSUANT TO THE FEDERAL DEBT COLLECTION PROCEDURES ACT OF 1990.*

A judgment, order or decree entered on or after May 28, 1991, in favor of the United States in a civil proceeding in a federal court regarding a debt owing to the United States arising from an obligation specified in the Federal Debt Collection Procedures Act of 1990, 28 U.S.C.A. §3001 et seq., shall, pursuant to the Act, be a lien for twenty (20) years on real property of the judgment debtor in a county on filing a certified copy of the abstract of a judgment, order or decree with the county clerk in the same manner as a federal tax lien, which, in Oklahoma County only, is indexed in the same manner as a financing statement.

"United States" means a federal corporation; an agency, department, commission, board or other entity of the United States; or an instrumentality of the United States. Such judgment, order or decree in favor of the United States may be renewed for one additional period of twenty (20) years after the court approval upon the filing of a notice of renewal in the same manner as the judgment, order or decree. Renewal does not apply to a judgment, order or decree in favor of the United States which was entered more than ten (10) years before May 28, 1991.

Caveat: 1. The provisions of Section 3201(1) of the Federal Debt Collection Procedures Act of 1990, regarding creation of a judgment lien, appear to be limited to judgments in civil actions, notwithstanding the fact Section 3002(8) references both civil and criminal proceedings within the definition of a "judgment" as used in the Act.

2. The text of Section 3005 of the Federal Debt Collection Procedure Act, 28 U.S.C.A. §3001 et seq., providing for renewal of the lien of a judgment entered within ten (10) years prior to May 28, 1991, does not specifically address the effect, if any, of the Act upon a judgment which became unenforceable and ceased to operate as a lien under law existing prior to May 28, 1991.

C. JUDGMENTS PURSUANT TO THE SMALL CLAIMS PROCEDURE ACT.

A judgment lien, pursuant to a judgment rendered in the small claims division of the district court,

1. Can be created on or after October 1, 1982, on the real estate of the judgment debtor within a county by filing a Statement of Judgment in the office of the county clerk in that county;

2. Could be created on or after October 1, 1979, and prior to October 1, 1982, on the real estate of the judgment debtor within a county by (a) entry of such judgment upon the judgment docket in the office of the district court clerk of the county in which the judgment was rendered and (b) filing a certified copy of such judgment in the office of the county clerk in which the lien was sought to be imposed, and such judgment could not be a lien until it had been both entered and filed, as described above; and

3. Could be created prior to October 1, 1979, on the real estate of the judgment debtor within a county by entry of such judgment upon the judgment docket in the office of the district court clerk of the county in which the lien was sought to be imposed.

Authority: 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).

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.

Comment: 1. 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.

2. 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).

3. Note that 1991 Okla. Sess. Laws, ch. 251 §9, contains provisions, among others, which restored, until the effective date of the 1993 act, the requirement of attaching an affidavit to any judgment to be filed with the County Clerk for purposes

of making such judgment lien on the real property of the judgment debtor and repealed the statutory prohibition on the issuance of execution or the conduct of proceedings for the enforcement of judgment within ten (10) days after the judgment is filed with the Court Clerk. It also repealed the statutory forms of judgment enacted in 1991 Okla. Sess. Laws, ch. 251, §1, which were not restored by the 1993 legislation. However, be aware of the case in Mapco, Inc. v. Means, 538 P.2d 593 (Okla. 1975).

4. The references to "filing" in the office of the county clerk, as used in this title examination standard, means presented, with tender of filing fee, and accepted by the county clerk.

2. Discussion

Several matters caused the Committee to decide to reorganize and revise this Standard on Judgment Liens, including (1) the passage by Congress of the Federal Debt Collection Procedures Act ("FDCPA") effective May 28, 1991 (See: "Federal Money Judgment Liens Under The Federal Debt Collection Procedure Act: A 40-Year Super Lien", 64 OBJ 3195 (Oct. 1993), by Kraettli Q. Epperson), (2) the passage by the State Legislature of the Civil Procedure Act effective in part on September 1, 1993 and effective in part on October 1, 1993 (H.B. 1468), and (3) a desire to restructure the form of the Standard to reflect three major subdivisions (i.e., A. Judgments of State and Federal Courts (Except Judgments Pursuant to the FDCPA of 1990), B. Judgments Pursuant to the FDCPA of 1990, and C. Small Claims Judgments).

The FDCPA (28 U.S.C.A. §§3001 et seq) required that money judgments from federal courts, arising due to an obligation owed to the United States, be filed pursuant to the Uniform Federal Lien Registration Act to become liens on the debtor's real property. Under the Federal Lien Registration Act such federal court money judgments must be filed in the local land records in order to create a lien. These liens continue for an initial period of 20 years, followed by another extension of 20 years. This 20 year period is substantially longer

than the five year life usually expected for money judgments. (12 O.S. §735) The FDCPA is especially troublesome because it appears to "revive" any already extinguished judgment liens (i.e., those over five years old) which were less than 10 years old when the Act came into effect on May 28, 1991.

The Standard 12.1 dealing with Judgment Liens was restructured to establish a separate sub-part (i.e., paragraph B) -- as one of three sub-parts -- for judgment liens under the FDCPA.

Then the passage of the State's Civil Procedure Act of 1993 required that another block of time be carved out for the period from October 1, 1993 and later, when the Statement of Judgment was first required as the step needed to create a money judgment lien. The various blocks of time, during which differing forms of Affidavits and Judgments were required, were kept separate, but were consolidated under a major heading (i.e., paragraph "A"), with six sub-parts, including a new one for the pre-October 1, 1978 period.

The former six lettered paragraphs of the Standard have been rearranged into three major paragraphs, as noted above, to improve the reader's ability to more quickly find the applicable parts. In addition, the Small Claims part (now paragraph "C") was corrected to show that the transition date when the filing location for Small Claims Judgments was moved from the district court to the county clerk's office was October 1, 1979, unlike District Court and Federal Court Judgments which moved to the county clerk's office on October 1, 1978.

B. 12.2 LIEN OF ALIMONY OR SUPPORT JUDGMENT

1. Revised Standard

12.2 LIEN FOR PROPERTY DIVISION ALIMONY OR SUPPORT ALIMONY ORDERED IN A DIVORCE DECREE

A. LIEN FOR PROPERTY DIVISION ALIMONY ON OR AFTER SEPTEMBER 1, 1991.

An order for the payment of property division alimony in a divorce decree, whether payable in a single sum or periodically, shall be a lien against the real property of the person against whom the property division alimony is awarded ("the debtor spouse") and provide constructive notice to subsequent purchasers and lienors if:

1. The order states the amount of alimony as a definite sum; and*

2. The order expressly provides for a lien on the debtor spouse's real property; and

3. Either

a. The court's order providing for a lien is recorded in the office of the county clerk for the county in which the real property is situated, or,

b. The debtor spouse acquired some or all of the interest in the real property that is subject to the lien via the divorce decree.

B. LIEN FOR PROPERTY DIVISION ALIMONY BEFORE SEPTEMBER 1, 1991.

An order for the payment of property division alimony in a divorce decree, whether payable in a single sum or periodically, shall be a lien upon the real property of the debtor spouse and provide constructive notice to subsequent purchasers and lienors if:

1. The order states the amount of alimony as a definite sum; and*

2. Either

a. The court's order providing for a lien is recorded as provided under the judgment lien statute (see Title Examination Standard 12.1), or

b. The debtor spouse acquired some or all of the interest in the real property that is subject to the lien via the divorce decree.

C. LIEN FOR SUPPORT ALIMONY ON OR AFTER SEPTEMBER 8, 1976.

An order for the payment of support alimony in a divorce decree, whether payable in a single sum or periodically, shall be a lien upon the real property of the debtor spouse and provide constructive notice to subsequent purchasers and lienors if:

1. The order states the amount of alimony as a definite sum; and*

2. The court's order expressly provides for a lien on the debtor spouse's real property; and

3. Either

a. The court's order providing for a lien is recorded in the office of the county clerk for the county in which the real property is situated, or

b. The debtor spouse acquired some or all of the interest in the real property subject to a lien via the divorce decree.

D. LIEN FOR SUPPORT ALIMONY BEFORE SEPTEMBER 8, 1976.

An order for the payment of support alimony in a divorce decree, whether payable in a single sum or periodically, shall be a lien upon the real property of the debtor spouse and provide constructive notice to subsequent purchasers and lienors if:

1. The order states the amount of alimony as a definite sum; and*

2. Either

a. The court's order providing for a lien is recorded as provided under the judgment lien statute (see Title Examination Standard 12.1), or

b. The debtor spouse acquired some or all of the interest in the real property that is subject to the lien via the divorce decree.

E. LIEN FOR ARREARAGE IN THE PAYMENT OF ALIMONY

An arrearage in the payment of the property division alimony or support alimony that has been reduced to a judgment may be a lien against the real property of the debtor spouse when such judgment is filed as provided under the judgment lien statute.

Authority: 12 O.S.A. §§181 & 706; 16 O.S.A. §15; 43 O.S.A. §134 (formerly numbered as 12 O.S.A. §1289) and the following prior versions thereof: 1987 Okla. Sess. Laws, ch. 130, §1, eff. June 3, 1987, 1976 Okla. Sess. Laws, ch. 61, §1, eff. September 8, 1976, and 1968 Okla. Sess. Laws, ch. 161 §1; the following prior versions of 43 O.S.A. (then numbered as 12 O.S.A. §1278): 1976 Okla. Sess. Laws, ch. 154, §1,

1975 Okla. Sess. Laws, ch. 350, §1, eff. October 1, 1975; Robert G. Spector, 63 O.B.J. 3473-74 (12/5/92).

**Caveat: 1. The statement of a definite sum is not a requirement when the creditor spouse is awarded a specific asset in lieu of alimony, Mayhue v. Mayhue, 706 P.2d 890 (Okla. 1985) (percentage of royalties from oil lease); Frensley v. Frensley, 177 Okla. 221, 58 P.2d 307 (1936) (interest in proceeds of a trust); Clark v. Clark, 460 P.2d 936 (Okla. 1969) (involving an insurance policy).*

2. A statement of the amount of alimony as a definite sum is not a requirement in a separate maintenance action, Hughes v. Hughes, 363 P.2d 155 (Okla. 1961).

Comment: For constructive notice purposes, with both property division and support alimony, the court's decree or order should be recorded with the county clerk. Nevertheless, if a lien for property division alimony or support alimony is specifically created in a divorce decree and that divorce decree is a link in the chain of title to the real property, courts have held subsequent bona fide purchasers and lienors to have constructive notice of the lien, even though the court's decree or order creating the lien was never recorded in the office of the county clerk, Watkins v. Watkins, 922 F.2d 1513 (10th Cir. 1991) (purchaser takes real property with constructive notice of what appears in the chain of title: because the divorce decree is what gave the ex-husband title to the property and that divorce decree revealed the existence of the lien in favor of the ex-wife, a bona fide purchaser would be on constructive notice of her lien); United Oklahoma Bank v. Moss, 793 P.2d 1359 (Okla. 1991). Thus, when the debtor spouse acquires part or all of the title to the real property through a divorce decree, language in the decree which creates a specific lien on that property cannot be ignored, even though the decree or order has not been recorded in the office of the county clerk.

2. Discussion

The previous Standard failed to reflect the rule of law announced in United Oklahoma Bank v. Moss, 793 P.2d 1359 (Okla. 1991) and in Watkins v. Watkins, 922. F.2d 1513 (10th Cir. 1991), and the 1991 changes in 43 O.S. §134(c). (See: "One Step Beyond: Judicial Creation of a Judgment Lien in Divorce Decrees", 62 OBJ 2631 (Sep. 91), by Kraettli Q. Epperson)

The above two cases declare that an owner of real property who acquired land from a divorced party takes title subject to any court ordered liens which came into

existence simultaneously in the same divorce decree that granted one spouse (the debtor spouse) an interest in the now-encumbered property that such debtor did not own before the court's grant. The revised Standard reflects this situation as one of two conditions (pre-1991), and as one of three conditions (post-1991), necessary to create a judgment lien from either property division or support alimony.

The other change to the Standard -- other than changes to its form -- was to make it evident that due to the change in 43 O.S. §134(c) the divorce decree granting a property division or support judgment for a definite sum is not a lien -- even if either the judgment is filed under 12 O.S. §706, or the judgment simultaneously grants the interest and the money judgment -- unless the order expressly creates a lien on the debtor spouse's property. (See: "The Peculiar Problem of Oklahoma's Alimony 'Cap' and Why It is No Longer Necessary", 63 OBJ 3473 (12/5/92) by Professor Robert G. Spector, and "Support Alimony: The Uncertain State of the Law", 44 Okla. L. Rev. 585 (1991) by Professor Robert G. Spector.)

The form of the Standard has also been changed to emphasize the pre-1991 and post-1991 dichotomy, and to handle property and support alimony distinctly and separately.

C. 12.3 CHILD SUPPORT ARREARAGE LIENS PURSUANT TO 12 O.S.A. §1289.1

1. Revised Standard

12.3 CHILD SUPPORT ARREARAGE LIENS PURSUANT TO 43 O.S.A. §135

[The only existing text of the present standard which would be changed by this proposal is the "Authority" paragraph; the only new text which would be added is the following "Caveat".]

Authority: 43 O.S.A. §135, renumbered from 12 O.S.A. §1289.1 by 1989 Okla. Sess. Laws, ch. 33, §1, effective November 1, 1989.

Caveat: The examiner should be aware that, on or after October 1, 1987, the creation of liens for past due child support in the absence of a judgment or order for arrearage is subject to statutory requirements that notice and the opportunity for a court or administrative hearing be given to the person ordered to make child support payments.

2. Discussion

A caveat was added to this Standard to emphasize that absent an order determining an arrearage in child support there cannot be a lien until there is at least notice and an opportunity for a hearing.

Further discussion by the Committee on this topic is anticipated for 1994.

D. 13.2 RELEASE OF JOINT MORTGAGE

1. Revised Standard

13.2 RELEASE OF MORTGAGE TO MULTIPLE MORTGAGEES

A. If a mortgage is payable to two or more mortgagees alternatively, one mortgagee acting alone can release the mortgage. For example, if a mortgage is payable to "A or B", a release from either A or B is sufficient.

B. If a mortgage executed on or after January 1, 1963, is payable to two or more mortgagees jointly and severally, all mortgagees must join in the release of the mortgage. For example, if a mortgage is payable to "A and B", both A and B must execute releases to discharge the mortgage. This is a reversal of prior law: If the mortgage to "A and B" is executed before January 1, 1963, and on its face appears to secure a single debt, a release from either A or B executed before January 1, 1963, is sufficient.

C. If the mortgage is ambiguous as to whether it is payable to the mortgagees alternatively, the examiner should presume that it is payable to the persons alternatively. For example, if the mortgage is payable to "A and/or B", a release from either A or B is sufficient.

Authority: 12A O.S. §3-110(d); Gill Equipment Co. v. Freedman, 339 Mass. 303, 158 N.E.2d 863 (1959); Jens-Marie Oil Co. v. Rixse, 72 Okla. 93, 178 P. 658 (1918); Wright v. Ware, 58 Ga. 150 (1877); R.G. & C.G. Patton, Patton on Titles (2d ed. 1957); G. Thompson, Real Property §4692 (Supp. 1958); L.A. Jones, Mortgages (8th ed. 1928).

Comment: This standard, as originally adopted in 1953, was based upon the common-law rule on joint mortgages incorporated in Negotiable Instrument Law of Oklahoma, 1909 Okla. Sess. Laws, ch. 24, art. II, §8 and art. III, §41. This rule was repealed effective January 1, 1963, when the Uniform Commercial Code was adopted in Oklahoma, and was replaced by a new rule codified as 12A O.S.A. §3-116. 1991 Okla. Sess. Laws, ch. 177, §35, effective January 1, 1992, moved the current rule to 12A O.S.A. §3-110(d) and added the presumption that a mortgage with ambiguous payee language should be construed as payable to the mortgagees alternatively.

2. Discussion

Effective January 1, 1992, the amendment of 12A O.S. §3-116 (1) renumbered it to become 12A O.S. §3-110(d), and (2) changed its language to create the presumption that a mortgage with ambiguous language as to whether it took only one or all

of the mortgagees to release it, will be payable in the alternative and, therefore, any one of the mortgagees can release it.

The Standard has also been restructured to reflect the three distinct types of mortgages: (1) payable alternatively ("or"), (2) payable jointly ("and") pre- and post-1963, and (3) ambiguous.

E. 21.1 VALIDITY OF INSTRUMENTS EXECUTED BY ATTORNEY-IN-FACT

1. Revised Standard

21.1 VALIDITY OF INSTRUMENT EXECUTED BY ATTORNEY-IN-FACT

Any instrument affecting real estate executed by an attorney-in-fact duly appointed and empowered is acceptable to vest marketable title in the grantee, unless:

A. The power of attorney was not executed, acknowledged and recorded in the manner required by law; or

B. A revocation of the power of attorney by either the principal or a conservator, guardian or other fiduciary of the principal appointed by a court of the principal's domicile has been recorded in the same office in which the instrument containing the power of attorney was recorded; or

C. The power of attorney has otherwise terminated by law, and such matter either appears in the abstract or is in the personal knowledge of the examiner.

Authority: 16 O.S.A. §§3 and 21; 58 O.S.A. §§1071 et seq.

Comment: The death, disability or incapacity of a principal who has previously executed a written power of attorney, whether durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact who, without actual knowledge of the death, disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and successors in interest, 58 O.S.A. §1075. The prior Caveat to the Standard has been deleted.

2. Discussion

a. The reasons for reviewing this Standard on the use of powers of attorney started as one and then grew to three. Initially the Standard was going to be revised simply to remove an ambiguity by revising a caveat/comment so that it was made clearer that the type of "homestead" which could not be conveyed or encumbered by use of a Power of Attorney was the "marital" homestead rather than the State Constitutional "general execution" homestead.

The original reason for this prohibition was due to the case law (Thomas v. James, 84 Okla. 19, 202 P. 499 (1921)) which prohibited spouses from signing separate deeds to the homestead. The result of such separate deeds was a void conveyance, a nullity. Consequently, the Committee had a concern that -- to avoid a null conveyance -- both spouses had to actually sign the same deed to the homestead, rather than one or both of them signing the deed through an Attorney in Fact under a properly recorded Power of Attorney. After extensive discussion within the Committee it was concluded by a consensus that, while each examining attorney will have to decide what minimum language the Power of Attorney must include in order to authorize -- expressly or by implication -- a conveyance or encumbrance of the marital homestead, there is not any Oklahoma statutory or case law expressly prohibiting the use of a power of attorney to affect a homestead interest. The main focus of the discussion was an 1894 Kansas Supreme Court case (Wallace v. Travelers' Inc. Co., 54 Kan. 442, 38 P. 489 (1894)) wherein the Court ruled invalid a conveyance of a homestead where one spouse's signature was based on a signature of an Attorney in Fact under a Power of Attorney. This case prompted Clarence Black of the law firm of Ames & Ashabranner, Oklahoma City, Oklahoma to write an article condemning in a blanket way the use of Powers of Attorney in Oklahoma for any marital homestead setting. (Clarence Black, "Factors to be Considered in Dealing with Attorneys in Fact", 14 Okla. Law Review 504, November 1961) A re-review of this Article and the underlying case, as well as applicable Oklahoma law, prompted the Committee to reverse its previous position against the use of powers of attorney in a homestead situation. Now the Standard permits such reliance. If the Power of Attorney is properly drafted, executed and filed of record, its use to sign a document

is -- by statute (16 O.S. §3) -- the equivalent of the person actually signing the deed or mortgage itself.

Therefore, for instance, a husband can give either his wife or a third party his power of attorney and then if the wife and the Attorney in Fact sign the same deed covering the homestead, then the conveyance is valid. Or, both spouses could give their Power of Attorney to a single third party and that third party could sign the deed twice, once for each of them, and the title being conveyed would be perfectly valid and marketable.

b. In addition, paragraph A of the existing Standard allowed the use of a power of attorney unless:

> A. The Power of Attorney was not executed, acknowledged and recorded in the manner required by 16 O.S.A. §20; or

This reference was to a specific statute (16 O.S. §20) which defined a specific "long form" version of the acknowledgment. By citing this one statute, it appeared that the Standard was excluding the use of the new "short form" acknowledgment to authenticate a Power of Attorney document. (49 O.S. §§111 et seq.) This conclusion was not the intended position of the Committee. The Committee does not believe the law requires the use of a "long form" rather than a "short form", although an acknowledgment is a necessary part of the Power of Attorney.

As part of the proposed overall revision of this Standard this error is being corrected to allow any form of acknowledgment authorized by law.

c. A review of the Statutes concerning reliance on Durable Powers of Attorney prompted the Committee to consider whether to draft an entirely new Standard dealing exclusively with the Durable Power of Attorney situation or to revise the existing

Standard on Power of Attorney. The decision was to use the proposed extensive revision of this Standard dealing with the "marital homestead" and "short form vs. long form" issues to also address the "durable" situation. Note that the authority of an agent under a "durable" power continues -- by its nature -- even if the principal is known to be disabled or incompetent, but would terminate upon the principal's death. A "regular" power would terminate upon either the death, or the disability or incompetency of the principal.

However, the Uniform Durable Power of Attorney Act (58 O.S. §1071 et seq) provides in pertinent part:

> §1073. Disability or incapacity of principal not affecting acts done pursuant to durable power of attorney
>
> All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled.
>
> §1075. Death, disability or incapacity of principal -- Effect on power of attorney
>
> A. Death of the principal revokes and terminates the power of attorney, provided however, the death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so take, unless otherwise invalid or unenforceable, binds successors in interest of the principal.
>
> B. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

§1076. Affidavit of lack of knowledge of termination or revocation of power of attorney

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity, is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

Consequently, the Standard 21.1 is being revised to explain how marketable title can be passed so long as the seller's attorney-in-fact and the third party purchaser do not have knowledge -- actual or constructive -- of the intervening fact that the Power of Attorney had terminated.

F. 23.3 CAPACITY OF CONSERVATEES TO CONVEY

1. Revised Standard

23.3 CAPACITY OF CONSERVATEES TO CONVEY

[Proposal amends only the Caveat to this standard.]

Caveat: 1989 Okla. Sess. Laws, ch. 276, (codified as 30 O.S.A. §3-211 et seq.) amended the conservatorship statutes to provide that a conservator may only be appointed with the consent of the ward, and further that all conservatorships created prior to November 1, 1989, with the consent of the ward would remain valid. 1991 Okla. Sess. Laws, ch. 395, §2, effective September 1, 1992, (codified as 30 O.S.A. §3-220) further provides that each such conservatorship shall be presumed to have been created by consent unless otherwise established by documents filed in the conservatorship or by other evidence.

2. Discussion

Due to the 1992 enactment of a revision to the Conservatorship statutes (effective September 1, 1993; 30 O.S. §3-220) a sentence was added to the existing Standard. This sentence points out that, in the absence of actual or constructive notice to the contrary, a post-1992 conservatorship is presumed to be with the consent of the conservatee and, therefore, is valid.

IV. NEW STANDARD FOR 1994 (Nov. 15, 1993)

A. 13.9 LAPSED FINANCING STATEMENTS

1. New Standard

13.9 LAPSED FINANCING STATEMENTS

A financing statement which constitutes a "fixture filing" under 12A O.S.A. §§9-313(1)(b) and 9-401A, other than:

1. A real estate or oil and gas leasehold mortgage which is effective as a "fixture filing" under 12A O.S.A. §9-402(5) an (6), and

2. A financing statement filed with the Oklahoma Secretary of State under 12A O.S.A. §9-403(6) which states that the debtor is a transmitting utility.

may be disregarded as lapsed provided:

a. Five (5) years has elapsed from either (i) the date of filing such financing statement or (ii) the date of commencement of the most recent five-year period through which the financing statement has been continued, and

b. No continuation statement has been filed in the office of the county clerk in the county in which the financing statement was originally filed within the six (6) months prior to the expiration of the current five-year period of such financing statement.

Authority: 12A O.S.A. §9-401A and §9-403.

Comment: 1. A continuation statement may be filed within six (6) months prior to the expiration of the current five-year period of the financing statement, 12A O.S.A. §9-403(3).

2. A security interest perfected by filing a financing statement remains perfected until sixty (60) days after termination of insolvency proceedings commenced by or against the debtor or until expiration of the five-year period of the financing statement, whichever later occurs, 12A O.S.A. §9-403(2).

2. Discussion

The statutes expressly provide that the security interest perfected by the filing of a financing statement -- for both fixtures filings and personal property filings -- are

extinguished five years after being filed, if a continuation statute is not filed. (12A O.S. §§9-313(1)(b) & 9-401A) By way of analogy there is a statute dealing with "ancient" unreleased mortgages which provides that title becomes marketable as to an unreleased mortgage, when it is either 10 years after its maturity date or 30 years after the mortgage is filed, if it does not have a maturity date. (46 O.S. §301) However, the statute dealing with "ancient" fixtures filings, does not specifically tell the title examiner that title is marketable after that five-year period lapses.

As a practical matter the Committee decided to adopt this new Standard to reflect the common practice within the bar by giving the examiner a Standard to look at and to point to in order to eliminate disputes on the topic.

V. PROPOSED NEW/REVISED STANDARDS FOR 1995 (NOV. 1994)

T.E.S. Committee: Agenda as of May 5, 1994 (See Attachment A)

VI. REVISED STANDARD(S) FOR 1995 (NOV. 1994)

A. 8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES

1. Revised Standard

8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES

A. The termination of the interest of a deceased joint tenant or life tenant may be conclusively established by one of the following methods:

1. By proceeding in the district court as provided in 58 O.S.A. § 911,

2. By a judicial finding of the death of the joint tenant or life tenant in any action brought in a court of record, or

3. By filing documents that satisfy 58 O.S.A. § 912C.

B. Certified copies of letters testamentary or letters of administration for the estate of the deceased joint tenant or life tenant are prima facie evidence of the death of that tenant.

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

1. A district court has ruled pursuant to 58 O.S.A. § 282.1 that there is no estate tax liability.

2. The joint tenant or life tenant has been dead more than ten years, or

3. The sole surviving joint tenant or remainder interest holder is the surviving spouse of the deceased joint tenant or sole life tenant.

Authority: 58 O.S.A. §§ 23, 133, 911 and 912; 60 O.S.A. §§ 36.1 and 74[.]

Comment: Title 58 O.S.A. § 912 is a procedural statute, and may be applied retroactively because it does not affect substantive rights; See Opin. Atty. Gen. 74-271 (February 10, 1975), Texas Country Irr. & Water v. Okla. Water, 803 P.2d 1119 (Okla. 1990), and Shelby-Downard Asphalt Co. v. Enyart, 67 Okla. 237, 170 P. 708 (1918). The death of a joint tenant or a life tenant may be conclusively established under § 912 regardless of the date of death and regardless of the date of filing of the affidavit.

The marketability of the title of the surviving spouse may be impaired by the lien of Oklahoma estate tax if the death occurred before November 1, 1984, unless such tax has been barred by the 10-year statute of limitations under 68 O.S.A. § 811. Marketability is not impaired by such tax lien if the surviving spouse filed an affidavit between October 1, 1980, and October 31, 1984, that recited that no Oklahoma estate tax was due.

The marketability of title may also be impaired by the lien of Federal estate tax. See Title Standard No. 17.2.]

2. Discussion

The deletions in the revised standard are shown by empty brackets (i.e., [ ]) and additions are underlined.

The Committee Minutes provide this description of the changes:

> *Marty Postic, on behalf of Gary Clark who was unable to be present, presented a second revised draft of existing Standard 8.1. The changes on the draft included narrowing the citation to statute in Paragraph A3, deleting all of Paragraph C and adding a caveat concerning impairment of marketability due to federal and Oklahoma estate tax liens. Additionally, an opinion of the attorney general, 74-271 (February 10, 1975), was added to the citation of authority in the comment portion of the standard. Initially it was moved and seconded to approve the revision. Upon additional discussion, it was noted that no substantive change in the law had occurred since the last revision of the standard. The motion to approve was then withdrawn and a second motion made and seconded which limited changes in the existing standard to revision of the citation to statutory authority in Paragraph A.3., addition of the Attorney General's opinion in the comment, and to add language concerning impairment of marketability due to federal estate tax lien as a third paragraph of the comment. Although reservations were still expressed concerning the retention of Paragraph C.3., all of existing Paragraph C was retained without revision. The motion passed and the revisions to the existing standard were approved.*

VII. NEW STANDARD(S) FOR 1995 (NOV. 1994)

A. CHAPTER 25: LIMITED LIABILITY COMPANIES

1. New Standard

CHAPTER 25: LIMITED LIABILITY COMPANIES

25.1 LIMITED LIABILITY COMPANIES MAY OWN PROPERTY

Limited liability companies are capable of holding title to real property in Oklahoma from and after September 1, 1992.

Authority: 18 O.S. § 2003.

25.2 IDENTITY OF MANAGER OF LIMITED LIABILITY COMPANY

If a person acknowledges in proper form in a recorded instrument that such person executed the instrument as a manager on behalf of a limited liability company, the title examiner may presume that the person held the position of a manager of the limited liability company. Person is defined in 18 O.S. § 2001 as an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity.

Authority: 18 O.S. §§ 2001, 2005, 2006; 49 O.S. §§ 112, 113, 118; 12 O.S. § 2902.

25.3 AUTHORITY OF MANAGER TO ACT FOR LIMITED LIABILITY COMPANY

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

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

Authority: 18 O.S. § 2005, 2019, 2042; Laws 1992, c. 148, § 6, eff. Sept. 1, 1992.

25.4 CONVEYANCE OF PROPERTY HELD IN NAME OF LIMITED LIABILITY COMPANY OR ITS MEMBERS OR MANAGERS

A. Property acquired by the limited liability company and held in the name of the company may be conveyed in the name of the company.

B. If property is conveyed to a person as a member or manager <u>without</u> reference to a named limited liability company, that person may execute a subsequent conveyance in the same capacity.

C. If property is conveyed to a person as a member or manager <u>with</u> reference to a named limited liability company, that person may execute a subsequent conveyance in the same capacity.

Authority: 18 O.S. § 2019.1.

25.5 NO MARITAL RIGHTS IN PROPERTY OWNED BY LIMITED LIABILITY COMPANY

No homestead or other marital rights attach to the interest of a manager or member in specific property owned by a limited liability company.

Authority: 18 O.S. § 2032.

25.6 ASSETS OF LIMITED LIABILITY COMPANY NOT SUBJECT TO EXECUTION FOR DEBTS OF MANAGERS OR MEMBERS

Specific property owned by a limited liability company is not subject to execution on a claim, judgment or lien against a member or manager of the company.

Authority: 18 O.S., §§ 2032, 2034.

25.7 LIMITED LIABILITY COMPANY DEEMED TO BE LEGALLY IN EXISTENCE

If a recorded instrument is executed and acknowledged in proper form on behalf of a limited liability company, the title examiner may presume that the limited liability company was legally in existence when the instrument was executed.

Authority: 18 O.S. § 2039.

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

If a recorded instrument is executed and acknowledged in proper form on behalf of a foreign limited liability company, the title examiner may presume that the company was properly formed in the jurisdiction in which it was organized and that it was registered to do business in this state when the instrument was executed.

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

2. Discussion

As of September 1, 1992 limited liability companies became statutorily recognized as entities capable of holding and conveying title to real property. (See 18 O.S. § 2000 et seq. -- amended as of September 1, 1993)

Attorneys representing buyers and lenders, who are about to take deeds and mortgages from a limited liability company, can and should ask for documentation beyond the bare essential set of instruments identified in these title examination standards. A subsequent examiner will be assuming that the transactional attorney performed their due diligence and that the resulting set of recorded documents reflect prima facie evidence of a properly conducted transition.

The two most relevant statutes to the title examiner are 18 O.S. § 2019: Manager as Agent of Limited Liability Company - Unauthorized acts- Property Transactions (initially enacted as of September 1, 1992 and amended on September 1, 1993) and 18 O.S. § 2019.1: Title to property - Transfer (initially enacted as of September 1, 1993).

These two statutes provide as follows:

18 O.S. § 2019 MANAGER AS AGENT OF LIMITED LIABILITY COMPANY - UNAUTHORIZED ACTS - PROPERTY TRANSACTIONS

A. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on the business of the limited liability company of which he is a manger, binds the limited liability company, unless the manager so

acting lacks the authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority. The unauthorized acts of the manager shall bind the limited liability company as to persons acting in good faith who have no knowledge of the fact that the manager had no such authority.

B. Subject to the provisions of subsection A of this section and Section 30 of this act, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more of its managers.

§ 2019.1 TITLE TO PROPERTY - TRANSFER

A. Title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company.

B. Title to property of the limited liability property that is held in the name of one or more members or managers with an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, even if the name of the limited liability company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

C. Property transferred under subsections A or B of this section may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under Section 2019 of Title 18 of the Oklahoma Statutes, unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

D. Title to property of the limited liability company that is held in the name of one or more persons other than the limited liability company without an indication in the instrument transferring title to the property to them of their capacity as members or managers of a limited liability company or of the existence of a limited liability company, may be transferred free of any claims of the limited liability company or the members by the person in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company.

VIII. 1994 T.E.S. COMMITTEE MEMBERSHIP

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OFFICERS: CHAIR - Kraettli Q. Epperson; VICE CHAIR - Judi E. Beaumont; SECRETARY - Diane C. Moershel

Revised 3 May 94

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Rosser IV, Malcolm E.	918 592-9800	592-9801	Crowe & Dunlevy	Suite 500	321 South Boston Avenue	Tulsa	74103
Rowland, David P.	918 336-4550	336-1933	Rowland & Rowland	415 South Dewey Avenue	P. O. Box 1436	Bartlesville	74005
Stone, Scott W.	405 255-5600	255-5843	Bonney, Weaver, Corley	Ste. 300, Security Bank Bldg.	16 South Ninth Street	Duncan	73533
Struckle, Joe J. (Jay)	918 745-0792	742-8084	Robert E. Parker & Associates	2431 E. 61st Street		Tulsa	74136
Tack, Jr., James D.	405 236-5900	236-5907		2600 First Nat'l Center West		Oklahoma City	73102
Van Laanen, Erin	405-272-0211		Spradling, Alpern, Friot & Gum	Suite 700	101 Park Avenue	Oklahoma City	73102
Wimbish, John B. (Jack)	918 494-3770	492-5264	Riddle, Wimbish & Crain	Suite 200, 5314 S. Yale Ave.	P. O. Box 35827	Tulsa	74153
HONORARY MEMBER(S):							
Opala, Hon. Marion P.	405 521-3839		Oklahoma Supreme Court	State Capitol Building	2300 N. Lincoln Boulevard	Oklahoma City	73105
Schuller, Stephen A.	918 583-8205	583-1226		1111 ParkCentre	525 S. Main Mall	Tulsa	74103

IX. THE (O.C.U.) NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER

THE NATIONAL TITLE EXAMINATION STANDARDS RESOURCE CENTER
(A Joint ABA-OBA-OCU Law School Project)
INDEX OF TITLE EXAMINATION STANDARDS MATERIALS
AVAILABLE AT THE OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW

(As of July, 1993)

1.	COLORADO	03-01-**91**	11.	(MISSOURI	05-15-**80)**
2.	CONNECTICUT	**93**	12.	NEBRASKA	10-29-**92**
3.	FLORIDA	05-01-**92**	13.	NEW HAMPSHIRE	01-01-**90**
4.	(GEORGIA	06-02-**72)**	14.	(NEW YORK	01-30-**76)**
5.	IOWA	07-01-**93**	15.	NORTH DAKOTA	*12-**93**
6.	KANSAS	**90**	16.	OHIO	11-**92**
7.	MAINE	04-27-**93**	17.	OKLAHOMA	*11-05-**93**
8.	MASSACHUSETTS	**93**	18.	RHODE ISLAND	**1993**
9.	MICHIGAN	08-**92**	19.	SOUTH DAKOTA	07-01-**88**
10.	MINNESOTA	06-25-**93**	20.	(WYOMING	07-01-**80)**

*added after July, 1993

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(Last Revised June, 1994)
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TITLE EXAMINATION STANDARDS COMMITTEE
of the
Real Property Law Section of the O.B.A.

1994 Agenda as of June 8, 1994

Sub-Committee	Std.	Status	Description
			===PENDING TOPICS===
			MAY 14/TULSA
Chapman Rheinberger Heath McBride Astle Durbin	NEW	May/Draft	LIMITED LIABILITY COMPANY PROCEDURE TO EXECUTE DOCUMENTS - How to determine--by a review of the record--the following: 1. Who are the members or managers? 2. What is the extent of the authorization of the person to execute real estate conveyances and encumbrances?
Heath Rowland Muratet Rogers	4.1	May/Report	MARKETABLE TITLE DEFINED - consider whether the definition of "Marketable Title" should be modified to approve title based on prima facie evidence.
Rheinburger John Myles	17.1	May/Draft	THE GENERAL FEDERAL TAX LIEN - Need to correct paragraph B to reflect change from a 6 year lien to a 10-year lien, as hinted at in the introductory "warning" Note.
Nowinski Myles Beaumont Gossett	20.2	May/Draft	BANKRUPTCIES ON OR AFTER OCTOBER 1, 1979 - 11 U.S.C. §362(d) provides for retroactive relief from the bankruptcy automatic stay through annulment. What documentation must the examining attorney review to determine if the stay has been properly annulled? Thereafter, are acts done in violation of the stay prior to the order of annulment validated (i.e., void versus voidable).
			JUNE 18/OKC
Flagler Moershel Chapman Durbin	NEW	June/Report	CONVEYANCES BY ELEEMOSYNARY INSTITUTIONS - Procedures to follow for marketable title.
Lower Postic Van Laanen	NEW	June/Report	CONVEYANCES FROM ONE-PERSON CORPORATION - Can a President or Vice President also act as Secretary and attest/seal their own signature?

ATTACHMENT 1

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

1994 Agenda as of June 8, 1994

Sub-Committee	Std.	Status	Description
			===PENDING TOPICS (CON'T)===
			JUNE 18 - (CON'T)
Astle Wimbish Lowery	13.3	June/Draft	RELEASE - CORRECTION OR RE-RECORDED MORTGAGE - Evaluate possible ambiguity about which instrument is meant by "corrected instrument".
Huddle Butler Myles Rosser Astle	13.8 & 13.9	June/Draft	UNENFORCEABLE MORTGAGES & MARKETABLE TITLE; LAPSED FINANCING STATEMENTS - Evaluating impact of USA v. Ward on life of mortgage liens and fixtures filing (federal mortgage lien does not ever expire).
Beaumont Butler	17.1	June/Report	THE GENERAL FEDERAL TAX LIEN - Paragraph A.4.d, which states that, based on a court case, a b.f.p., takes free of a tax lien, even if the b.f.p. has actual notice of an unrecorded tax lien, may have been changed in 1989 by a change in 26 U.S.C. §6323.H.6.
Postic Richie	22.2	June/Report	TITLE TO PROPERTY HELD UNDER AN EXPRESS PRIVATE TRUST - Due to changes in 60 O.S.A.§§175.6(a), 175.6(b) and 171, can express private trusts hold and convey title in the name of the trust (not in the name of the trustee) and, if so, what must the title examiner look for in the abstract?
Postic John Myles	21.1	June/Draft	VALIDITY OF INSTRUMENTS EXECUTED BY ATTORNEY-IN-FACT- (?)
			JULY 16/TULSA
Astle Rheinberger	NEW	July/Draft	SHORT FORM ACKNOWLEDGEMENT - Evaluate need for a Standard supporting the use of the "short form" acknowledgment despite language of 16 O.S. §33.
Van Laanen Epperson	NEW	July/Report	CONVEYANCES BY DISSOLVED OR SUSPENDED CORPORATIONS - (1) Under what conditions, and by following what procedures, can a corporation that was dissolved more than 3 years ago execute a correction deed or disclaimer of interest, and (2) can a corporation which is currently suspended (usually for non-payment of franchise taxes) convey legal/marketable/valid title?

TITLE EXAMINATION STANDARDS COMMITTEE
of the
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1994 Agenda as of June 8, 1994

Sub-Committee	Std.	Status	Description
			===PENDING TOPICS (CON'T)===
			JULY 16 -(CON'T)
Beaumont	12.3	July/Report	CHILD SUPPORT ARREARAGE LIENS PURSUANT TO 43 O.S.A. §135 - Need to clarify caveat calling for notice and an opportunity for a hearing.
Beaumont	22.1	July/Report	POWERS OF TRUSTEE - Do homestead rights continue after homestead real property is put into trust?
Struckle Postic Cleverdon	22.1	July/Draft	POWERS OF TRUSTEE - Adding a comment about ensuring all estate tax issues are resolved if there is a successor trustee in place.
			COMPLETED PROJECTS
Newton Heath Muratet Rosser Eachin	NEW	Jan./ Dropped	INSTRUMENTS AFFECTING TITLE TO PROPERTY WHICH ARE REQUIRED TO BE FILED OR RECORDED OTHER THAN IN THE OFFICE OF A COUNTY CLERK - Where else does a title examiner need to look.
Butler Flagler	NEW	Feb./ Dropped	PERSONAL PROPERTY TAX ON UNIFORM ABSTRACTOR'S CERTIFICATE - Is the status of PPT properly disclosed on the current certificate?
Clark Wimbish Postic Beaumont Struckle	8.1	Mar./ Approved	TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES - Evaluate the need to review this Standard in Part C. to require a waiver or release of a potential federal estate tax lien in addition to the state estate tax lien, if the estate exceeds $600,000.
Richie Flagler	16.3	Apr./Dropped	EFFECT OF JUDGMENTS IN DIVORCE CASES AWARDING PROPERTY TO PARTY LITIGANT - Do the case law and statutory changes that caused changes in 12.2 last year also require changes in this standard?