

**UPDATE ON OKLAHOMA REAL PROPERTY TITLE
AUTHORITY:
STATUTES, CASES & TITLE EXAMINATION STANDARDS
REVISIONS FOR 2021-2022
(Covering July 1, 2021 to June 30, 2022)**

BY:

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Oklahoma City Real Property Lawyers Association

At:

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RESPECT FOR THE COURTS

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

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

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A. LIST OF LATEST 10 ARTICLES BY KRAETTLI Q. EPPERSON (Available Online @ EppersonLaw.com)

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- **Oklahoma Bar - Admitted 1979**
- **Honors: AV rated; 2022 The Best Lawyers in America (Oil and Gas; Real Estate Law); 2021 Oklahoma Super Lawyers;**
- **2021 405 Magazine Top Lawyers (Eminent Domain)**

EDUCATION:

- **University of Oklahoma [B.A. (PoliSci-Urban Admin.) 1971];**
- **State Univ. of N.Y. at Stony Brook [M.S. (Urban and Policy Sciences) 1974]; &**
- **Oklahoma City University [J.D. (Law) 1978].**

PRACTICE AREAS:

- **Mineral/Surface Title Matters: Curative, Litigation, Expert Consultant/Witness, and Opinions**
- **Mediations and Arbitrations**

SUCCESSFUL APPELLATE CASES AND SAMPLE ENGAGEMENTS:

- **Amicus Brief: Washout of ORRI (Arnold v. Cabot Oil & Gas Corp., 2021 OK 4)**
- **Appellant Counsel: Inadequate Legal Description (Riverbend Lands, LLC v. State of Oklahoma, ex rel, Oklahoma Turnpike Authority, 2019 OK CIV APP 31)**
- **Amicus Brief: Enforcement of Ancient Probate (Bebout v. Ewell, 2017 OK 22)**
- **Expert Opinion: Reformation of Deeds (Scott v. Peters, 2016 OK 16)**
- **Secured AG Opinion: Safe Distance Between Residences and Well Sites (2009 OK AG 5)**
- **Court-appointed Receiver for 5 Abstract Companies**

SPECIAL ACTIVITIES:

- **OBA Title Examination Standards Committee (Chairperson: 1988-2020)**
- **Oklahoma City University School of Law adjunct professor: “Oklahoma Land Titles” (1982-2018)**
- **Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor and Contributing Author**

SELECTED PUBLICATIONS:

- ***“Payment of Proceeds from Production Under the PRSA: The Obligation to Determine Current ‘Marketable Title’” 93 OBJ 5 (May 2022)***
- ***“Filing a “Reservation of Time” Waives Certain 12 O.S. §2012(B) Defenses Because the Rule Under Young May Have Been Superseded By Statute”, 93 OBJ 1, (January 2022)***
- ***“Seeking Default Judgment: After Schweigert”, 91 OBJ 54 (April 2020)***



Passed 2022 Legislation AND Proposed 2023 Legislation

Deadlines Impacting Oklahoma Title and Real Property Attorneys

November 9, 2022

Deadline	Deadline Date
Deadline for Requesting the Drafting of Bills and Joint Resolutions	Friday, December 09, 2022
Deadline for details to follow	Thursday, December 29, 2022
Organizational Day	Tuesday, January 03, 2023
Deadline for Minor Redraft Requests	Thursday, January 19, 2023 NLT 10:00 am
Deadline for Filing of Bills and Joint Resolutions	Monday, February 06, 2023
First Day of the First Regular Session of the 59 th Legislature	Monday, February 27, 2023
Deadline for HBs/HJR out of Subcommittee	Thursday, March 02, 2023
Deadline for HBs/HJR out of Standing Committee	Thursday, March 23, 2023
Deadline for Third Reading of Bills and Joint Resolutions in Chamber of Origin	Monday, April 03, 2023
Deadline for SBs/SJR out of Subcommittee	Monday, April 07, 2023
Deadline for SBs/SJR out of Standing Committee (exception for SBs/SJR in full A&B Committee)	Friday, April 07, 2023
Deadline for SBs/SJR out of full A&B Committee	Friday, April 14, 2023

PROBATE:

Bill No.: SB 1460

Brief Title: Probate procedure; modifying requirements for proper venue for certain proceedings.

Sponsor: Howard (Senate) and Moore (House)

Description: Seeks to clarify venue for probate venue issues.

Comments: The Comm. Substitute for SB 1460 provides that the district court in and for the county of proper venue has exclusive jurisdiction to prove a will or to grant letters testamentary or of administration. Additionally, in all cases of administration of estates of deceased persons in this state where final decrees have been entered prior to the effective date of this act, and for which the final decrees are or may be defective or invalid for lack of jurisdiction because the

Bill No.: SB 1460 (cont'd)

Comments: administration was in a county other than the county of proper venue as prescribed by this section, such final decrees shall be deemed valid except in certain circumstances.

Status: Senate Committee Substitute 3/1/22, Floor (Senate 3/2/22), Engrossed 3/9/22; Senate Votes 45-3; 5/5/2022 passed, Approved by Governor.

TRUSTS:

Bill No.: SB 1340

Brief Title: Trusts;

Sponsor: Hall (Senate) and Kannady (House)

Description: Trusts: Modifying the Uniform Testamentary Additions to Trust Act; authorizing devise of property by will to certain trusts.

Comments: Creates the Uniform Testamentary Additions Act which permits wills to validly devise property to the trustees of a trust under certain conditions. The Comm. Substitute for SB 1340 provides that a will may validly devise property to the trustee of a trust established or to be established during the testator's lifetime by the testator, by the testator and some other person, or by some other person including a funded or unfunded life insurance trust.

Bill No.: SB 1340 (cont'd)

Comments: The devise shall not be invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death. The Comm. Substitute provides that unless the testator's will says otherwise, property devised to a trust shall become a part of the trust to which it is devised, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust including any amendments thereto made before or after the testator's death.

Status: First Reading 2/7/22; Second Reading 2/7/22; Engrossed to House 2/22/22; First House Reading 2/22/22; Passed the Senate 48-0; 5/3/2022 Approved by Governor.

OKLAHOMA SUPREME COURT CASES: JULY 1, 2021 – JUNE 30, 2022

A. OKLAHOMA SUPREME COURT CASES
(JULY 1, 2021-JUNE 30, 2022)
LIST OF CASES

#	TOPIC		CASE	OLAHOMA CITATION	DECIDED
					MANDATE
	GENERAL	SPECIFIC			
A. <u>OKLAHOMA SUPREME COURT</u>					
1	Materialmen’s Lien	Materialmen’s Lien Not Waived By Subcontractor’s Waiver	H2K Technologies v. WSP USA	2021 OK 59	11/16/21
					3/2/2022
2	Deadline for Serving Summons	Covid-19 SCAD Orders “Tolled” Statutory Service of Summons 180-Day Deadline	McBee v. Shanahan Home Design	2021 OK 60	11/16/21
					12/8/21
3	Inverse Condemnation & Governmental Tort Claims Act	An Inverse Condemnation is not a “Tort”, & is not Governed by the Governmental Tort Claims Act	Rocket Properties v. LaFortune	2022 OK 5	1/18/22
					?
4	Residential Property Condition Disclosure Act	RPCDA Exempts From Its Coverage a Transfer by a Non-Owner-Occupant Fiduciary	Rickard v. Coulimore	2022 OK 9	1/25/22
					3/30/22

A. OKLAHOMA SUPREME COURT CASES
(JULY 1, 2021-JUNE 30, 2022)
LIST OF CASES

#	TOPIC		CASE	OLAHOMA CITATION	DECIDED
					MANDATE
	GENERAL	SPECIFIC			
A. <u>OKLAHOMA SUPREME COURT</u>					
5	Forcible Entry & Detainer	Affirmative Defenses Must be Considered in FED Matters (Impracticality & Frustration of Purpose -- Due to Covid)	Meng v. Rahimi	2022 OK 11	2/1/22
					3/30/22
6	Inverse Condemnation	A Public Trust has Eminent Domain Authority	Barnett v. Okay Public Works Authority	2022 OK 24	3/8/22
					5/5/22

1. H2K TECHNOLOGIES v. WSP USA, (2021 OK 59)

➤ GENERAL TOPIC: MATERIALMEN'S LIEN

➤ SPECIFIC TOPIC: MATERIALMEN'S LIEN NOT WAIVED
BY SUBCONTRACTOR'S WAIVER

FACTS:

- Owner, Wynnewood Refining Co., contracted for labor and materials with General Contractor, WSP, USA, Inc. to improve the property. (¶1)
- WSP entered into sub-contract for labor and materials with Techsas, Inc. (1) with a clause waiving all liens and claims, and (2) requiring Techsas to include such waiver language in any sub-contract. (¶2)
- Techsas entered into a sub-contract with Plaintiff, H2K Technologies, Inc. for labor and materials, without a waiver of liens and claims. (¶'s 2 & 11)
- WSP (General Contractor) paid 2 of 3 invoices received from Techsas (sub-contractor). Then Techsas filed Bankruptcy. (¶2)
- H2K was not paid, and, after filing appropriate “preliminary lien notices” on the owner, general contractor and sub-contractor, filed a lien statement in the office of the Garvin County Clerk for \$120,780 (plus interest). (¶2)

FACTS: (cont'd)

- **H2K filed a petition to foreclose the lien (\$120,780). (§2)**
- **General Contractor, WSP (and its surety), submitted a bond to discharge the lien, and the owner was dismissed; the case continued against the General Contractor (WSP). (§3)**

HOLDINGS:

TRIAL COURT:

- Both parties (General Contractor, WSP, and materialmen, H2K, filed motions for summary judgment. (§4)
- Trial court granted the Motion for Summary Judgment from WSP and denied the Motion for Summary Judgment from H2K. (§4)
- First: Sub-contractor's contract with H2K applying New York Law ("which prohibits waiver clauses") is unenforceable as to Oklahoma construction contracts, pursuant to 15 O.S. § 821(B)(1). (§4)
- Second: H2K is charged with constructive notice [Author: Why; How?] of the provision waiving liens and claims in the sub-contract between WSP, the General Contractor, and Techsas, sub-contractor, and, therefore, H2K could not "obtain any greater rights" then Techsas, sub-contractor, who waived all liens and claims. (§4)

HOLDINGS: (cont'd)

TRIAL COURT:

➤ **Holding: Granted Motion for Summary Judgment of WPS, General Contractor, and, therefore, held H2K did not have a valid or proper lien, and exonerated and discharged the bond. (§4)**

OKLAHOMA SUPREME COURT:

- H2K appealed.
- Oklahoma Supreme Court retained matter on its own motion. (¶5)

Argument #1:

- First: 42 §143 grants rights to sub-contractors and materialmen to file liens. (¶8)
- While “a sub-contractor only has a lien ‘in the same manner, and to the same extent as the original contractor’,” this “extent” does not “mean the right or ability to file a lien,” but means the owner “shall not thereby become liable to any claimant for any greater amount than he contracted to pay the original contractor.” (¶10)

OKLAHOMA SUPREME COURT: (cont'd)

- Second: Case Law holds that “the rights of sub-contractors, materialmen, and workmen to a lien is controlled by the terms of the original contract. They are chargeable with notice of the terms of such contract.” (§12)
- The language waiving “liens and claims” is not in the original contract between Wynnewood, owner, and WSP, General Contractor, but it is in the sub-contract between WSP and Techsas, sub-contractor. (§12)
- Because it is not in the original contract it is not constructive notice to H2K and, therefore, is not binding on H2K. (§12)
- Also, the sub-contract between Techsas and H2K failed to include this waiver change. (§12)

OKLAHOMA SUPREME COURT: (cont'd)

- **Third:** There is no language in the original contract, nor in the sub-contract between Techsas and H2K constituting “pass through, flow-down or conduit provisions”, whereby “H2K never agreed to a flow-down provision that would bind it to the terms of the Techsas contract” as to waiver of liens and claims. (§13)
- “We hold, a party may waive their own statutory right to file a lien, otherwise, such right is limited by the provisions of §143. There being no evidence the H2K ever waived its right to a lien, it therefore was not prohibited from filing a lien solely based upon the fact that Techsas had waived its right in its sub-contract with the original contractor.” (§15)

OKLAHOMA SUPREME COURT: (cont'd)

Argument #2:

- First: 15 O.S. §821(B)(1) does render “void and unenforceable” any contractual term which “makes the [construction] contract subject to the laws of another state...”. (¶16)
- Second: “Subsection (B)(2) provides, it is against public policy for a provision in a construction contract to disallow or alter the rights of any contractor or sub-contractor to receive and enforce any rights under this act...The purpose of the act is to provide deadlines or progress payments to contractors and sub-contractors...”. (¶17)
- (B)(2) does not “apply to mechanics and materialmen’s liens, which are found in title 42 of the Oklahoma Statutes.” (¶17)

OKLAHOMA SUPREME COURT: (cont'd)

➤ Overall Conclusion:

“We hold that under the limited issues of law presented to this Court, H2K, without further evidence, was not bound by the waiver of lien clause in the Techsas Contract. We also hold that the provisions of 15 O.S. 2011, § 821(B)(2) are not applicable to mechanics’ and materialmen liens. We reverse the trial court’s order granting summary judgment and remand for further proceedings consistent with this opinion.” (¶18)

2. McBEE v. SHANAHAN HOME DESIGN, (2021 OK 60)

- GENERAL TOPIC: DEADLINE FOR SERVING SUMMONS
- SPECIFIC TOPIC: COVID-19 SCAD ORDERS “TOLLED”
STATUTORY SERVICE OF SUMMONS 180-DAY DEADLINE

FACTS:

- **The Plaintiff filed its Petition on November 19, 2019 concerning construction of Plaintiff's home. Summons was served on the 2 Defendants on July 8, 2020 and July 16, 2020, respectively.**
- **The three SCAD Orders suspended and tolled all rules, procedures, and deadlines, whether set by statute, rule or order from March 15, 2020 to May 15, 2020 for civil, criminal or juvenile cases. (¶0)**

HOLDINGS:

TRIAL COURT:

- **12 O.S. §2004.1 required the Plaintiff to serve summons on the Defendant within 180 days of filing the Petition. (¶0)**
- **Failure to timely serve the summons requires the court to dismiss the case. (¶0)**
- **The trial court granted the Defendants’ Motion to Dismiss, due to untimely service of summons after the 180 day limit. (¶’s 0 & 7)**
- **Specifically, “On October 7, 2020 the trial court issued and filed an order sustaining the motion to dismiss. The trial judge concluded, ‘because the Summons had not been issued prior to the Covid-19 issues that were addressed by the Supreme Court Directives (SCAD 2020-24; SCAD 2020-29; SCAD 2020-36), the directives do not apply.’ The trial judge further held that the 180-day period for service of summons was not stayed by the joint emergency orders.” (¶7)**
- **The Plaintiff appealed.**

OKLAHOMA SUPREME COURT:

- The Oklahoma Supreme Court retained the matter.
- Service is always considered punctual if served timely, within 180 days, without regard to when it is issued; even if, as in this case, it was not issued before the SCAD orders were issued and effective.

(¶17)

- The third joint emergency order explained how to apply the orders:

“5. Paragraphs 4 and 5 of the Second Emergency Joint Order remain in effect to May 15, 2020. In all cases, the period from March 16, 2020 to May 15, 2020, during which all rules and procedures, and deadlines whether prescribed by statute, rule or order in any civil, juvenile, or criminal case were suspended, will be treated as a tolling period. May 16th shall be the first day counted in determining the remaining time of act. The entire time permitted by statute, rule or procedure is not renewed.” (¶18)

OKLAHOMA SUPREME COURT: (cont'd)

“For all cases pending before March 16, 2020, the deadlines are extended for only the amount of days remaining to complete the action. For example, if the rule required the filing of an appellate brief within 20 days and as of March 16, ten (10) days remained to file the brief, then the party has 10 days with May 16, 2020 being the first day.” (¶18)

OKLAHOMA SUPREME COURT: (cont'd)

The Oklahoma Supreme Court concluded:

“From November 19, 2019, to March 15, 2020, a total of 117 days had expired, leaving McBee with 63 days to complete service under § 2004(l). When statutory deadlines resumed on May 16, 2020, McBee had until Saturday July 18, 2020 to complete service on the defendants. McBee served Biggs Backhoe on July 8, 2020, and Shanahan on July 16, 2020; therefore, both were served with the petition and summons in a timely manner, and it was error for the trial court to grant the defendants’ joint motion to dismiss based on a failure to serve within 180 days. Accordingly, we reverse and remand this case for additional proceedings in the trial court.” (¶19)

3. ROCKET PROPERTIES v. LaFORTUNE **(2022 OK 5)**

- **GENERAL TOPIC:** INVERSE CONDEMNATION, AND GOVERNMENTAL TORT CLAIMS ACT
- **SPECIFIC TOPIC:** AN INVERSE CONDEMNATION IS NOT A “TORT”, AND IS NOT GOVERNED BY THE GOVERNMENTAL TORT CLAIMS ACT

FACTS: [NO FACTS WERE GIVEN]

HOLDINGS:

TRIAL COURT:

➤ Trial Court granted “the City of Tulsa’s Motion for Summary Judgment in dismissing Petitioner’s inverse condemnation on grounds Petitioner’s claim is governed by the Oklahoma Governmental Tort Claims Act (GTCA). See 51 O.S. 2011, §151 et seq.” (¶2)

OKLAHOMA SUPREME COURT:

- Petitioner filed a Petition for Writ of Prohibition against enforcing such dismissal. (¶2)
- Original jurisdiction by the Oklahoma Supreme Court was assumed. (¶0)
- “When private property is taken for a public purpose pursuant to the government’s power of eminent domain, the property owner is entitled to just compensation...”. Oklahoma Const. art. 2, §24, see also O.S. §16. (¶3)
- “If the government does not institute condemnation proceedings, the property owner has the right to file an inverse condemnation proceeding to recover for the property taken.” 27 O.S. §12 (¶4)
- “Condemnation proceedings do not involve a tort.” (¶6)
- “...[A] cause of action grounded on inverse condemnation is not governed by the GTCA.” (¶6)

OKLAHOMA SUPREME COURT: (cont'd)

- **“The question before this Court is whether the GCTA applies to inverse condemnation claims in light of the 2014 legislative amendments to the GCTA... . We hold it does not.” (§11)**
- **“... condemnation proceedings do not involve a tort.” (§14)**
- **“Accordingly, the Court concludes that an inverse condemnation claim does not constitute a ‘tort’ under the GTCA, and is therefore not subject to the GTCA.” (§15)**
- **“The Petition for Writ of Prohibition is granted.” (§2)**

4. RICKARD v. COULIMORE (2022 OK 9)

- GENERAL TOPIC: RESIDENTIAL PROPERTY CONDITION DISCLOSURE ACT
- SPECIFIC TOPIC: RPCDA EXEMPTS FROM ITS COVERAGE A TRANSFER BY A NON-OWNER-OCCUPANT FIDUCIARY

FACTS:

- **Two individuals (husband and wife), defendants, acquired a residence. (§2)**
- **They never occupied the residence, and resided out of state. (§2)**
- **Their daughter, son-in-law and grandchildren occupied it. (§2)**
- **The Defendants conveyed the land to their revocable trust. (§2)**
- **The Defendants, as trustees, conveyed the land to the Plaintiff. (§1)**
- **The Plaintiff had “to vacate the property due to issues from previous flooding, water and drainage damage.” (§3)**
- **The Plaintiff sued the defendants for failure to disclose these defects. (§3)**

HOLDINGS:

TRIAL COURT:

- Plaintiff claimed the transaction was exempt from the RPCDA and, therefore, she could sue for common law remedies. (¶3)
- Defendants asserted there was no duty to disclose under the RPCDA, and Plaintiff had waived both the right to inspect the property and any claims, at closing. (¶3)
- The Trial Court held -- after hearing competing Motions for Summary Judgment -- the transaction was exempt from the RPCDA because the defendants were trustees who were never “owner occupants”, as exempted by 60 O.S. § 838(A)(3). (¶3)
- The Trial Court certified the order for immediate appeal on this single issue. (¶3)

OKLAHOMA SUPREME COURT:

- The Oklahoma Supreme Court granted Certiorari. (¶3)
- First: “The RPCDA provides the sole and exclusive remedy for civil actions for a seller’s failure to disclose to the buyer a defect which was actually known to the seller prior to acceptance of an offer to purchase. See 60 O.S.2011 § 837(A)-(B); White v. Lim, 2009 OK 79, ¶17, 224 P.3d 679, 685. The RPCDA applies to most residential real property transactions. See 60 O.S.2011 § § 832-833. However, §838 lists several exemptions. The trial court found the transaction was exempt from the RPCDA pursuant to 60 O.S. § 838(A)(3), which provides:

A. This act does not apply to:

3. Transfers by a fiduciary who is not an owner occupant of the subject property in the course of the administration of a decedent’s estate, guardianship, conservatorship or trust...”.

OKLAHOMA SUPREME COURT: (cont'd)

- **60 O.S. § 838(A).** Rickard's position is the transaction is exempt and the RPCDA does not apply. The Coulimores' position is the transaction is not exempt and the RPCDA does apply. The Coulimores argue the transaction is not exempt because (1) the transaction was not a transfer by a fiduciary; (2) the Coulimores, as husband and wife, previously owned the property and, therefore, were "owner occupants" of the subject property; and (3) the transfer was not in the course of the administration of a decedent's trust. (§6)
- The court rejected the Defendants' argument that because they were a "trustee" of their own trust, they were not a "fiduciary" for a third person. (§8)
- The court rejected the Defendants' argument that they could not become a fiduciary until the revocable trust became irrevocable upon their death, because the statutory language covered all "trusts". (§9)

OKLAHOMA SUPREME COURT: (cont'd)

- The court held it was a transfer by a fiduciary (trustees). (§10)
- The Defendants asserted that the exemption only applied if they (the Defendants) had never been an “owner”; but was not applicable because, as individuals, they had been an “owner”. (§11)
- The Court rejected this argument because the Defendants both as individuals and as trustees had never “occupied” the property and, therefore, were never an “owner occupant”. (§12)
- The Court noted that while a “trust” cannot occupy a property, a “trustee” can. (§13)
- The Defendants argued that since they were alive they were not exempt since the statute only gives an exemption for a conveyance from a “decedent’s...trust”. (§15)
- The Court rejected this argument because the plain reading of the statute covers any “trust”, without a requirement for a death. (§16)

OKLAHOMA SUPREME COURT: (cont'd)

Finally:

➤ The Court affirmed the trial court's judgment that the Defendants were exempt from the RPCDA and remanded it for resolution of the other claims and defenses. (¶¶0)

5. MENG v. RAHIMI (2020 OK 11)

- GENERAL TOPIC: FORCIBLE ENTRY & DETAINER
- SPECIFIC TOPIC: AFFIRMATIVE DEFENSES MUST BE CONSIDERED IN F.E.D. MATTERS (IMPRACTICALITY & FRUSTRATION OF PURPOSE -- DUE TO COVID)

FACTS:

- **Commercial lease included a provision agreeing to “no abatement, diminution, or reduction of the Rents for any...future Public Law...or by other causes beyond the control of the Landlord.” (Dissent ¶2)**
- **2-year lease started in August 2019. (¶2)**
- **Due to Oklahoma governor’s Covid Order, and because the owner and sole employee became ill with Covid, the business (“massage business”) was closed in March 2020. (¶’s 4 & 5)**
- **In April 2020, the Governor allowed the subject business to reopen. (¶’s 5 & 11)**
- **In June 2020 Landlord filed a Forcible Entry and Detainer Action “for past due rent and eviction.” (¶6)**

HOLDINGS:

TRIAL COURT:

- **At a hearing (August 2020) the Landlords made their request for past due rent and eviction. (§6)**
- **The Tenant offered proof and witnesses to establish an affirmative defense of “frustration of purpose or impracticality.” (§6)**
- **The Trial Court did not allow the Tenant to offer any evidence of these defenses. (§6)**
- **There were other Counter Claims and offsets asserted by the Tenants that were not considered. (§6)**
- **The Trial Court certified the question for immediate appeal. (§7)**

OKLAHOMA SUPREME COURT:

MAJORITY:

- Petition for Certiorari was granted. (¶7)
- The affirmative defenses of “impossibility, impracticality or frustration of purpose of contract” were considered. (¶10)
- “Because contractual responsibilities are essential to predictability for the parties, this defense has many inherent safeguards. The circumstance giving rise to the conditions of impossibility must have not been foreseeable or anticipated by the parties, and the person unable to perform must not be at fault. *Id.* at ¶20, 434 P.2d at 158. Even if it can be established that the circumstance was neither foreseeable nor anticipated by the parties, impossibility of performance is further restricted, and a distinction is drawn between objective and subjective impossibility. Pinkerton’s *supra*. At ¶8, 742 P.2d at 548.

OKLAHOMA SUPREME COURT: (cont'd)

➤ **“Objective impossibility may excuse performance of a contract, but a party must prove that performance could not be done by anybody. Id. To the contrary, subjective impossibility does not excuse performance and arises when the failure to perform arises from the personal inability of a promisor to perform.” (§13)**

OKLAHOMA SUPREME COURT: (cont'd)

➤ “This forcible entry and detainer action was filed in small claims court and is governed by the Small Claims Procedure Act, 12 O.S. 2011 § §1751 -- 1773. Although the object of this Act is the efficient and prompt disposition of claims and defenses, the Legislature did not intend to do away with fundamental due process and the right to defend an action. Johnson v. Scott, 1985 OK 50, ¶12, 702 P.2d 56, 58. Section 1761 of this Act grants each party the right to present evidence and witnesses before a court. Id.” (¶14)

OKLAHOMA SUPREME COURT: (cont'd)

➤ “We offer no opinion on Meng’s ability to establish the requirements of her defense, and for what length of time, if any, said impossibility existed. Because supervening impossibility is a recognized affirmative defense to nonperformance of a contract, Meng is entitled to present evidence in support of it. The trial court erred in not allowing this testimony. Its interlocutory order awarding \$6,400 is reversed, and the cause is remanded to the trial court for further proceedings consistent with this opinion. (¶15)

OKLAHOMA SUPREME COURT: (cont'd)

DISSENT:

- Dissent asserts that the majority impermissibly re-wrote the parties' contract, which provided “controlling language” that did not allow abatement of rent for circumstances such as a pandemic or future law. (Dissent: ¶1-3)
- Dissent argues this decision creates substantial confusion among all commercial tenants who may seek to abrogate their lease contract due to the tenant's decision to close their business contrary to the express terms of their contract and cancel the agreement. (Dissent: ¶5)

6. BARNETT v. OKAY PUBLIC WORKS AUTHORITY (2022 OK 24)

- GENERAL TOPIC: INVERSE CONDEMNATION
- SPECIFIC TOPIC: A PUBLIC TRUST HAS EMINENT DOMAIN AUTHORITY

FACTS:

- **The Okay Public Works Authority received a \$99,000 grant from the Oklahoma Water Resources Board for a project (§19)**
- **The Authority constructed and installed pipelines to transport and deliver waste water to the treatment plant, from throughout many parts of the City of Okay. (§’s 4, 5 & 15)**
- **The Authority got easements from all landowners except for a mobile home community (“River Valley”). (§’s 4-5)**
- **“The work performed by OPWA caused extensive damages to the River Valley premises near to the excavation area. Further, during and upon completion of the project, sewage did not drain properly from the mobile homes.” (§6)**
- **The owner of the River Valley mobile home park (“Barnett”) sued the Authority for inverse condemnation. (§7)**

HOLDINGS:

Trial Court:

- **Trial court held a jury trial. (§0)**
- **Authority asserted (1) it did not have the power of eminent domain, and (2) the project was not for a public purpose. (§'s 7 & 11)**
- **Trial court granted judgment to owner Barnett awarding \$73,350 in damages and granted the Authority an easement. (§7)**
- **Authority appealed. (§7)**

COURT OF CIVIL APPEALS:

➤ COCA reversed the trial court and held 60 O.S. §176(J) did give the Authority the ability to use eminent domain but only for “furnishing of water for domestic purposes,” but not for “waste water and sewer lines.” (¶8)

OKLAHOMA SUPREME COURT:

- The Supreme Court granted Certiorari. (¶0)
- The Authority, as a Public Trust, has the power of eminent domain. (¶14)
- This power covered all “water”, both potable (safe to drink) and waste water (used). (¶’s 15 & 16)
- The project benefited, not just the mobile home community, but other areas of the City of Okay, and the project was, therefore, of a public nature. (¶’s 20 & 21)
- Vacated COCA opinion and affirmed trial court judgment. (¶22)

OKLAHOMA COURT OF CIVIL APPEALS: JULY 1, 2021 – JUNE 30, 2022

B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2021 - JUNE 30, 2022)
LIST OF CASES

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
					MANDATE
	GENERAL	SPECIFIC			
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
7	Oklahoma Residential Landlord & Tenant Act, <u>AND</u> Evidence Code	Landlord Must Present Invoices or Value of Repairs Actually Done <u>AND</u> Evidence Can Be Re-Evaluated on a Re-Trial	Morris v. Behrens	2021 OK CIV APP 35	6/25/2021
					9/16/2021
8	Partition Action <u>and</u> Wife's Property Omitted in Divorce Decree	Deed to Spouse is Effective Even if Fraud on Creditors or to Avoid Probate	Peveto v. Peveto	2022 OK CIV APP 7	2/22/22
					3/23/22

B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2021 - JUNE 30, 2022)
LIST OF CASES

NO.	TOPIC		CASE	OKLAHOMA CITATION	DECIDED
					MANDATE
	GENERAL	SPECIFIC			
B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u>					
9	Homestead Protection <u>AND</u> Extension of Time	Absence of Spouse’s Signatures Renders Easement on Homestead Void, <u>AND</u> Failure to Undertake Discovery Prevents Extension of Time to Answer Motion for Summary Judgment	Johnson Avenue, LLC v. Big Time Billboards, LLC	No. 119,368	3/11/22
					(11/2/22) -- (Petition for Certiorari Denied)

7. MORRIS v. BEHRENS (2021 OK CIV APP 35)

- GENERAL TOPIC: OKLAHOMA RESIDENTIAL LANDLORD & TENANT ACT, AND EVIDENCE CODE
- SPECIFIC TOPIC: LANDLORD MUST PRESENT INVOICES OR VALUE OF REPAIRS ACTUALLY DONE, AND EVIDENCE CAN BE RE-EVALUATED ON A RE-TRIAL

FACTS:

➤ Landlord sued tenants for alleged damages to a rental house, under the Oklahoma Residential Landlord and Tenant Act (“ORLTA”), including “replacement of hardwood floors, three light fixtures, and yard work,” and other repairs. (§3)

HOLDINGS:

Trial Court:

- Under the ORLTA, at a first trial, the trial court awarded the landlord \$6,366.04 in damages (with no transcript or other record of the trial). (¶1)
- After the trial court granted the tenants' request for a new trial, the trial court awarded the landlord the reduced amount of \$1,117.96 in damages based on invoices for work done, and would not include any amount for estimates of work not yet done. (¶1)

COURT OF CIVIL APPEALS:

- First, as to the interpretation of the ORLTA, the COCA held:
“Rather, the statute says that a “landlord may enter the dwelling unit and cause work to be done [i.e., a repair, the replacement of a damaged item, or cleaning] in a workmanlike manner and thereafter submit the itemized bill for the actual and reasonable cost or the fair and reasonable value thereof....” 41 O.S. §132(A) (emphasis added). Put simply, 41 O.S. §132(A) sets forth a prerequisite to a Landlord’s recovery of damages from a Tenant: the Landlord must cause work to be done in a workmanlike manner prior to reimbursement.” (¶7)
- The trial court’s reduction of the award so that it was based solely on invoices for “work...done” was affirmed. (¶4)
- “The trial court did not, however, award damages for work yet to commerce...”. (¶3)

COURT OF CIVIL APPEALS:

- Second, the landlord claims that the trial court should be reversed because its judgment impermissibly declared the landlord's estimates of work to be done, to be hearsay. (§§ 10 & 11)
- However, an action under the ORLTA is under the Small Claims Procedure Act, and such "actions shall be informal." (§12)
- Therefore, the trial court should consider all evidence, even hearsay evidence. (§14)
- The trial court did correctly consider all evidence, whether hearsay or not. (§14)
- It appears the landlord's estimates were rejected, not as hearsay, but as not showing invoices for completed work. (§14)

COURT OF CIVIL APPEALS: (cont'd)

- Third, landlord argues that the “law of the case doctrine” requires the trial court to treat the evidence presented in the first trial -- where an award of \$6,366.04 was granted on the same evidence -- in exactly the same way, meaning it was not hearsay at the first trial, and, therefore, cannot be re-categorized upon a new trial. (¶15)
- However, “As Appellee/Landlord points out, Appellant’s/Tenant’s ‘suggestion that [the settled-law-of-the-case] doctrine constrains a trial court conducting, for whatever reason, a new trial in a matter it tried earlier to the evidence and arguments made by the parties in the earlier trial reflects a fundamental misunderstanding of the doctrine...’”. (¶15)
- “We agree and find that this [the Settled-Law-of-the-Case] doctrine is inapplicable here.” (¶15)
- The trial court judgment was affirmed. (¶16)

8. PEVETO v. PEVETO (2022 OK CIV APP 7)

- GENERAL TOPIC: PARTITION ACTION, AND WIFE'S PROPERTY OMITTED IN DIVORCE DECREE
- SPECIFIC TOPIC: DEED TO SPOUSE IS EFFECTIVE EVEN IF FRAUD ON CREDITORS OR TO AVOID PROBATE

FACTS:

- Wife -- 4 months before their marriage in November 2000 -- provided all of the funds to buy a house, which was put solely into to-be-husband's name. (§2)
- Between the purchase in 2000, and when the parties divorced in 2015, the husband and wife repeatedly conveyed the land back and forth, several times into both of them as joint tenants, and then several times to the wife alone, and finally to the wife alone in 2011. (§2)
- All of these deeds were delivered to the wife, but several were never recorded, including the last one to the wife. (§3)
- “Through each transfer and the divorce, wife remained in the house.” (§2)
- “From that time forward [upon the transfer to the wife alone in 2011], wife exclusively paid the mortgage and taxes.” (§3)
- In the divorce decree the house was not mentioned. (§1)

FACTS:

➤ After the divorce, the husband filed this partition action to sell the house and get half of the proceeds of sale. (§1)

HOLDINGS:

Trial Court:

- **“The issue is whether Wife owns the house in her individual capacity or whether the house is owned by Wife and Husband as joint tenants. In the partition proceeding below, the court in its final order found that the original deed from Husband to Husband and Wife as joint tenants was the only operable deed as the others were either prepared to defraud creditors and therefore void or they were never delivered. The trial court remanded the matter to the divorce court to dispose of the marital asset.” (§1)**
- **The wife appealed.**

COURT OF CIVIL APPEALS:

- “Property division and retention of individually owned assets are typically addressed in the divorce decree, however, ‘assets acquired during coverture which are omitted from the court’s division of spousal property in the decree are owned by the party in whose name title was vested before the divorce.’ Chapman v. Chapman, 1984 OK 89, ¶11, 692 P.2d 1369, 1374 (citation omitted).” (¶6)
- The COCA held all of the deeds were presumed delivered (contrary to the trial court’s finding), since the wife (grantee) had possession of them -- even if they were not recorded -- since only execution and delivery, and not recording, is needed for a transfer to be effective. (¶14)
- Also, the wife exclusively paid the mortgage and taxes. (¶15)

COURT OF CIVIL APPEALS: (cont'd)

➤ The COCA states:

“The trial court found that the initial deed transferring the house from Husband to Husband and Wife as joint tenants was the only operable deed due to fraud and lack of delivery of the other deeds. The clear weight of the evidence supports the trial court’s finding that the deeds were prepared for fraudulent purposes. It is true that a ‘transfer made or obligation incurred by a debtor is fraudulent as to a creditor...’ 24 O.S. 1986 §116(A). However, attempting to defraud creditors does not overcome the presumption of donative intent between the parties to the instrument. Metcalf v. Metcalf, 2020 OK 20, ¶17, 465 P.3d 1187, 1191. The trial court’s order determining that the deeds were void because they were prepared to defraud creditors is contrary to law. The fraudulent deeds do not prevent transfer from occurring between Husband and Wife.” (¶9)

COURT OF CIVIL APPEALS: (cont'd)

➤ The COCA also held:

“Husband asserts that the deeds were prepared for estate planning purposes. This claim is unpersuasive. As an attorney, Husband should have been aware that the deeds would need to be filed in his lifetime or comply with the requirements of a will, which they do not, to be effective if filed after his death.

To be effective after the grantor’s death, the deed must have been executed by the grantor in the form and manner required by law for the execution of deeds, and in the lifetime of the grantor he, the said grantor, must have caused such deed and the title to such real estate to have passed completely beyond his power and control, and have caused the title to same to pass into the control of the grantee...”.
(¶10)

COURT OF CIVIL APPEALS: (cont'd)

➤ COCA held:

“The clear weight of the evidence and law indicate that Wife owned the house following the 2004 deed. However, even if Wife did not have exclusive title in 2004, she did by 2011 when Husband delivered the final quit claim deed transferring his interest to her. Husband intended to convey the house to Wife either for fraudulent reasons or estate planning purposes, but either way, he had donative intent and the property passed title from joint tenancy to Wife’s individual ownership.” (¶17)

“The trial court’s order is REVERSED. This case is remanded to the trial court to enter judgment for Defendant/Appellant, Lorie Ann Peveto, in the partition action.” (¶18)

9. JOHNSON AVENUE, LLC v.
BIG TIME BILLBOARDS, LLC,
(No. 119,368)

➤ GENERAL TOPIC: HOMESTEAD PROTECTION AND
EXTENSION OF TIME

➤ SPECIFIC TOPIC: ABSENCE OF SPOUSE'S SIGNATURE
RENDERS EASEMENT ON HOMESTEAD VOID, AND FAILURE
TO UNDERTAKE DISCOVERY PREVENTS EXTENSION OF TIME
TO ANSWER MOTION FOR SUMMARY JUDGMENT

FACTS:

- **Single man (Duane) acquired title to land in 1993. (§2)**
- **Owner (Duane) married Kim in 2002. (§2)**
- **Owner (Duane), by himself alone granted easement to Defendant (Big Time) in 2014 during Duane and Kim's marriage. (§2)**
- **During 2014, Duane and Kim were married, and claimed homestead tax exemption with the county in 2013, 2014, and 2015 (§10)**
- **There were recorded mortgages on the land. (§10)**
- **Big Time built a billboard on the land (§2)**
- **Duane and Kim divorced in 2019. (§3)**
- **Kim received land in divorce decree. (§3)**
- **Kim conveyed land to Plaintiff (Johnson Avenue) after the divorce in 2019. (§3)**
- **Johnson Avenue sued to quiet title against easement holder, Big Time. (§3)**

HOLDINGS:

TRIAL COURT:

- Plaintiff, Johnson Avenue, sued easement holder, Big Time, to quiet title, claiming the land was Duane and Kim's homestead, and, therefore, the easement, without Kim's signature, was void. (§4)
- Plaintiff argued that Okla. Const., Art. 12, §2 and 16 O.S. §4 required joinder of spouse in any conveyance of the marital homestead, or any interest therein. (§4)
- Plaintiff argued this land was the parties' homestead and, therefore, in the absence of Kim's signature, the easement grant was void. (§4)
- Defendant, Big Time, argued the status of being homestead was a fact issue dependent on the parties' intent. (§5)

HOLDINGS:

TRIAL COURT: (cont'd)

- **When Plaintiff find a Motion for Summary Judgment declaring the easement to be void, Defendant did not file a Response for the Motion for Summary Judgment, but instead filed a Motion for Extension of Time to take the depositions of the non-parties, Duane and Kim. (§5)**
- **Trial court focused on the Defendant's delays between its Answer on August 17, 2020, and the Plaintiff's Motion for Summary Judgment which was filed on October 14, 2020, and the Motion for Summary Judgment hearing was held on January 6, 2021. (§12)**
- **Defendants had not attempted the now-sought discovery by the hearing date on January 6, 2021 -- after almost 5 months after filing its Answer (§12)**

HOLDINGS:

TRIAL COURT: (cont'd)

- Trial court denied the Defendant's request for an Extension of Time to Respond to the Motion for Summary Judgment, in order to take the deposition of Duane and Kim, due to the Defendant's lack of due diligence. (¶11)
- Trial court granted the Motion for Summary Judgment by Plaintiff, holding the easement was void due to the homestead nature of land, and the wife's, Kim's, failure to sign the easement. (¶1)
- FN1 of the Court of Civil Appeals opinion states: "The Journal Entry granting summary judgment further states, in part, that Big Time is 'not precluded from filing a motion...under the Occupying Claimants statute, 12 O.S. §1481 *et seq.*'"
- Defendant, Big Time appealed.

COURT OF CIVIL APPEALS:

- **COCA affirmed the trial court on both matters: (1) Denial of Motion for Extension of Time to Respond to the Plaintiff's Motion for Summary Judgment to take depositions of Duane and Kim, and (2) Grant of Plaintiff's Motion for Summary Judgment cancelling the easement. (§14)**
- **Specifically, COCA held, due to the Defendant's failure to attempt discovery on Duane and Kim in a timely manner, the trial court did not abuse its discretion in denying the request for Extension of Time to Answer the Motion for Summary Judgment. (§12)**
- **Further, COCA held (§10):**
 - **Duane and Kim were married during 2014 when Duane alone gave the easement.**
 - **They claimed a homestead tax exemption on the land in 2013, 2014, and 2015.**

COURT OF CIVIL APPEALS: (cont'd)

- These “tax records” provided “constructive notice” “of the homestead on the subject property.” [SEE AUTHOR’S COMMENTS BELOW] (§10)
- The “mortgages for the subject property provided constructive notice of the homestead on the subject property.” [SEE AUTHOR’S COMMENTS BELOW] (§10)
- The COCA concluded:

“The decision of the trial court to deny Big Time’s Rule 13(d) request for continuance did not constitute an abuse of discretion. Additionally, the grant of summary judgment to John Avenue and to quiet title in its favor was proper as a matter of law, in light of the fact that it was undisputed that the easement had not been signed by both Kim and Duane and that they had claimed a homestead on the property. Therefore, we affirm the trial court January 19, 2021, Journal Entry of Judgment Quieting Title.” (§14)

SUPREME COURT:

➤ Petition for Certiorari was denied.

AUTHOR'S COMMENTS:

- 1. It is certainly well settled that land which is marital homestead or an interest therein cannot be conveyed or encumbered without joinder of spouse, if any.**
- 2. However, since the status of a tract of land being marital homestead is a state of mind, as evidenced by the action of residing on the land, the COCA's statement that (a) the parties' assertion of a homestead tax exemption, and (b) the parties' mortgages (recorded?), gave "constructive notice" of a (presumptive or conclusive) claim of marital homestead is a new rule.**
- 3. The trial court denied a request for an extension of time to conduct depositions of Duane and Kim to determine the "material" fact as to whether the land was in reality the marital homestead.**

AUTHOR'S COMMENTS: (cont'd)

- 4. Once the Defendants' extension was denied, the trial court granted the Plaintiff's pending Motion for Summary Judgment voiding the easement.**
- 5. There is no mention of an existing Scheduling Order, which normally would set deadlines for completion of Discovery, and filing of Dispositive Motions.**
- 6. There is also no suggestion that the Defendants failed to abide by such (non-existent) ordered deadlines.**
- 7. Consequently, it was arguably arbitrary for the Trial Court to conclude that the Defendants had failed to attempt discovery in a "timely manner".**
- 8. The Court of Civil Appeals cites two Oklahoma Supreme Court cases in support of its determination that the trial court's denial of the request for an extension of time was not an abuse of discretion.**

AUTHOR'S COMMENTS: (cont'd)

- 9. However, both of the cases cited by the Court of Civil Appeals held that the trial court did abuse its discretion!**
- 10. In Bookout v. Great Plains, 1997 OK 38, the party's request for an extension of time to finish collecting expert testimony (regarding medical negligence) to respond to a pending Motion for Summary Judgment was denied and the Motion for Summary Judgment was granted. The Oklahoma Supreme Court held that because the missing evidence was "material", it was an abuse of discretion to deny the extension. The holding in this Bookout case easily shows that the trial court in this Johnson Avenue did abuse its discretion by failing to grant the requested extension of time to secure the "material" evidence to establish the facts regarding the marital homestead nature of the land.**

AUTHOR'S COMMENTS: (cont'd)

11. In Christian v. Gray, 2003 OK 10, the party's offer of an expert's testimony was stricken because the testimony being offered (regarding the cause of an injury) failed to include a "base-line (pre-injury) medical study to show cause in fact of a medical injury." This denial of the admission of the expert's testimony was deemed an abuse of discretion by the trial court. A writ of prohibition by the Oklahoma Supreme Court was issued against the trial court's *in limine* order. This appellate decision was based on the fact that such a base-line study was not deemed necessary by "the relevant community of experts."

AUTHOR'S COMMENTS: (cont'd)

- 12. This decision in the Johnson Avenue Case (i.e., denial of the extension of time), combined with the Defendant's failure to file a Response to the Motion for Summary Judgment to offer evidence disproving the marital homestead status of the land, left the trial court with little choice accept to review the evidence presented by the Plaintiff on the marital homestead issue.**
- 13. The trial court has a duty to evaluate a Motion for Summary Judgment to ensure there is sufficient evidence in such Motion for Summary Judgment to support the requested relief; the Defendant's silence only permits the trial court to accept the evidence that was submitted as being unrebutted.**
- 14. This Author is not aware of any case law saying a homestead tax exemption presumptively or conclusively establishes one's marital homestead, and was "constructive notice" of such status of homestead.**

AUTHOR'S COMMENTS: (cont'd)

- 15. There is no explanation at all as to why a mortgage established “constructive notice” of a marital homestead interest.**
- 16. Oklahoma Law protects any potential marital homestead from being conveyed or encumbered by one member of the married couple, even where such grantor is the sole owner of record; such protection is provided by requiring both spouses to join on every such conveyance or encumbrance. Therefore, the simple joinder of a non-title holding spouse on a mortgage is not an indication that such land is the marital homestead. [See 16 O.S. §4, Ok. Const., Art. 12 §2, Oklahoma Title Examination Standard 7.2]**

AUTHOR'S COMMENTS: (cont'd)

- 17. The concept of “constructive notice” is an expressly defined term and only includes instruments identified by law as giving constructive notice; and this Author was unaware that tax records are one of them. (See 16 O.S. §§ 15-16) While it is undisputed that a buyer of land takes with notice of an outstanding property tax bill, that is different than relying on a homestead exemption as presumptive or conclusive proof of “homestead” status.**
- 18. There was no mention in the Court of Civil Appeals Opinion suggesting that the divorce decree provided evidence that this land was the parties’ marital homestead.**
- 19. However, in Johnson Avenue’s “Response for Certiorari”, it is stated (p. 8): “Actual occupancy by both Duane and Kim Lester is undisputed and established by the Decree of Divorce and Dissolution of Marriage. Therein, it states that Duane and Kim Lester resided upon the property until their divorce on April 3, 2019.”**

AUTHOR'S COMMENTS: (cont'd)

- 20. If such statement of residency is true and had been disclosed in the Court of Civil Appeals Opinion, this Author would have been more comfortable with this decision. Its absence presents a misleading ruling.**
- 21. The Oklahoma TES dealing with marital homestead (TES 7.2) does not allow one's homestead exemption claim on one tract of land to permit a title examiner to conclude another tract is not the parties' homestead. So this case, relying on inconclusive evidence--homestead tax exemption claim, and a mortgage (what in the mortgage established the status as homestead?)--undermines this TES concept.**

AUTHOR'S COMMENTS: (cont'd)

22. An alternative and probably better course by the trial court would have been to deny the Motion for Summary Judgment until discovery was completed and either reconsider a new Motion for Summary Judgment, or to allow the matter to proceed to trial to establish the fact of whether this land was the marital homestead.

2022 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2023, to be presented for approval by the House of Delegates, Oklahoma Bar Association prior to or at the 2022 OBA Annual Meeting. Additions are underlined, deletions are indicated by ~~strikeout~~. Formatting requests that are not to be printed are contained within {curly brackets}.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section prior to or at its annual meeting in 2022.

Proposals approved by the Section will be presented to the House of Delegates prior to or at the 2022 OBA Annual Meeting. Proposals adopted by the House of Delegates become effective immediately. [THESE WERE APPROVED]

An explanatory note precedes each proposed Title Standard, indicating the nature and reason for the change proposed.

Proposal No. 1.

The committee recommends a new Standard 17.4.1 be included to assist title examiners with the documents required for the acceptance of an interest pursuant to a Transfer-on-Death Deed.

17.4.1 ACCEPTING AN INTEREST PURSUANT TO A TRANSFER-ON-DEATH DEED

To accept the transfer of a conveyance to multiple grantee beneficiaries in a Transfer-on-Death Deed, each individual beneficiary must accept and record the Affidavit affirming the acceptance of the conveyed real property interest under the Transfer-of-Death Deed.

Authority: 58 O.S. §1252.

Comment No. 1: All beneficiaries must execute and record an acceptance in order to receive their respective interest under a Transfer on Death Deed. As an example, A executes a Transfer on Death Deed naming X, Y, and Z as beneficiaries. X and Y execute and record the acceptance required under the statute. Z does not. In this situation, the 1/3 interest that would have gone to Z reverts to A's estate to be distributed by proceedings pursuant to applicable law and statute. Under this scenario, the 1/3 interest which reverts to A's estate may ultimately be distributed to a party other than or in addition to Z.

Comment 2: It is irrelevant whether the grantees/beneficiaries execute a single document, or they execute their respective acceptances on separate documents.

Proposal No. 2

The Committee recommends a new Standard 17 be included to assist title examiners with understanding when notice should be provided to the Regional Director of the Bureau of Indian Affairs.

17. NOTICE TO THE REGIONAL DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS

CAVEAT: The examiner is advised that notice must be given to the Regional Director of the Bureau of Indian Affairs of certain probate proceedings of a member of the Five Civilized Tribes in which a final order was entered after August 4, 1947.

In any such probate proceeding in which a final order was entered after August 4, 1947, but on or before December 31, 2019, which proceeding includes property restricted in the hands of a decedent of one-half or more quantum of Indian blood, written notice must have been served on the Regional Director of the Bureau of

Indian Affairs (or its predecessor) within ten (10) days of the filing of the probate proceeding. Failure to serve notice is jurisdictional, rendering the proceedings nonbinding on the United States of America and void as to any restricted property interest. However, service beyond the ten-day requirement is a procedural defect which is waived by subsequent general entry of appearance, election not to remove, or removal by the United States.

Authority: Act of August 4, 1947, 61 Stat 731 (Stigler Act).

Anderson v. Peck, 53 F.2d 257 (N.D. Okla. 1931).

United States v. Thompson, 128 F.2d 173 (10 Cir. 1942).

In any such probate proceeding in which a final order was entered after December 31, 2019 (regardless of the decedent's date of death), which includes property restricted in the hands of the decedent of any quantum of Indian blood, written notice must have been served on the Regional Director of the Bureau of Indian Affairs within ten (10) days of the filing of the probate proceeding. Failure to serve notice is jurisdictional, rendering the proceedings nonbinding on the United States of America and void as to any restricted property interest. However, service beyond the ten-day requirement is a procedural defect which is waived by subsequent general entry of appearance, election not remove, or removal by the United States.

Authority: H.R. 2606 Public Law 116-399 (Amendment to Stigler Act).

Anderson v. Peck, 53 F.2d 257 (N.D. Okla. 1931).

United States v. Thompson, 128 F.2d 173 (10 Cir. 1942).

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

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

AUGUST 20, 2022 AGENDA
(As of August 17, 2022)

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

***[Note: if you want to download a free pdf copy of the current 2022 TES
handbook, go to www.eppersonlaw.com]***

___**SATURDAY, AUGUST 20, 2022**___

Speakers (Sub-Comm.)	Standard #	Status	Description
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BUSINESS/GENERAL DISCUSSION OF CURRENT EVENTS

9:30 a.m. – 10:15 a.m.

Secretary Notes: Rhonda McLean

Previous Month's TES Committee Minutes: Rhonda McLean

Hot Topics / General Questions: Kraettli Epperson

Legislative Report: Tyler Larsen

PRESENTATIONS

<u>Carson</u> Dowd Seda Struckle Schaller Wurtz	17.4	2 nd Reading	<i>TRANSFER ON DEATH DEEDS</i> Need to clarify whether all of the beneficiaries need to sign the post-death affidavit.
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<u>McLean</u> Seda Carson Wimbish Charney Tucker Larsen	General	August Report	<i>SELF-DEALING TRUSTEE</i>
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***** **END OF PRESENTATIONS** *****

<u>Brown</u> Epperson Keen Reed Schaller Seda	General	August Report	<i>SLTA</i>
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<u>Keen</u> <u>Reed</u> <u>Wimbish</u> McLean Sullivan Jones Shields Laughlin Wolf McEachin Mose-Goins	General	May Report	<i>INDIAN TITLE STANDARDS</i> Report on status of efforts to identify changes needed throughout the Standards to reflect the impact of Indian ownership of land. The impact on Indian titles through application of the SLTA and the MRTA may need to be clarified.
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<u>Epperson</u> Carruth Dowd McLean Seda Taylor	NEW	Pending Leg.	<i>DEFAULT JUDGMENTS</i> Discussion as to motions for default judgments when seeking in light of the <i>Schweigert</i> case.
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===== *APPROVED* =====

===== *UNSCHEDULED* =====

<u>???</u> Seda Carson	29.6	Pending Leg.	<i>ABSTRACTING</i> Consideration of either adding additional pleadings to show in the abstract or removing the entire TES 29.6, due to authority of OAB to regulate abstract content.
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<u>???</u> Seda Carson	General	Pending Leg.	<i>CONTENT OF ABSTRACT</i> Need to analyze proper role of title examination standards in light of the authority and duty of the OAB.
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<u>Larsen</u> Astle Wittrock Schaller Struckle	24.*	Unsch.	<i>AFFIDAVITS AND RECITALS</i> The question has come up on how affidavits are to be used in lieu of mortgage releases.
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=====TABLED TO 2023=====

COMMITTEE OFFICERS:

<u>Chair:</u> Roberto Seda, OKC rseda@sedalawfirm.com (405) 759-0678	<u>Legislative Reporter:</u> Tyler Larsen, OKC
<u>Vice-Chair:</u> Barbara Carson, Tulsa (918) 605-8862 barbaracarson@yahoo.com	<u>Handbook Editor:</u> Michael McMillin
<u>Secretary:</u> Rhonda McLean (405) 513-7707 rmclean@munsonmcmillin.com	<u>OBA Bulletin Board Highlights</u> <u>Reporter:</u> TBD
<u>Past-Chair:</u> Kraettli Q. Epperson, OKC (405) 848-9100 kqe@meehoge.com	<u>Title Update Seminars:</u> Kraettli Q. Epperson

2022 Title Examination Standards Committee
(Third Saturday: January through September)
Time: 9:30 a.m. to 12 noon

<u>Month</u>	<u>Day</u>	<u>City/Town</u>	<u>Location</u>
January	15	Virtual	N/A
February	19	Stroud	Hampton Inn
March	19	OKC	Oklahoma Bar Center
April	16	Stroud	Hampton Inn
May	21	Tulsa	FirsTitle
June	18	Stroud	Hampton Inn
July	16	OKC	Oklahoma Bar Center
August	20	Stroud	Hampton Inn
September	17	Tulsa	FirsTitle

<u>FirsTitle</u> 1401 S. Boulder Ave. Tulsa, Oklahoma 74119	Hampton Inn & Suites 915 Ada Webb Dr. Stroud, Oklahoma 74079
Oklahoma Bar Center 1901 N. Lincoln Blvd. Oklahoma City, OK 73152-3036	

MY 10 MOST RECENT GENERAL TITLE ARTICLES

(last revised July 12, 2022)

341. “Payment of Proceeds from Production Under the PRSA The Obligation to Determine Current ‘Marketable Title’”; 93 Oklahoma Bar Journal 5 (May, 2022)

338. “Filing A ‘Reservation of Time’ Waives Certain 12 O.S. §2012(B) Defenses Because the Rule Under *Young* May Have Been Superseded By Statute”; 93 Oklahoma Bar Journal 1 (January 2022)

332. “Probate Venue (aka Jurisdiction) Is Important: *Fulks* Overrules *Walker*”; 92 Oklahoma Bar Journal 4 (April 2021)

324. “Seeking Default Judgment: After Schweigert”; 91 Oklahoma Bar Journal 54 (April 2020)

306. “Constructive Notice: Oklahoma’s Hybrid System Affecting Surface and Mineral Interests”; 89 Oklahoma Bar Journal 40 (January 2018)

294. “The Oklahoma Marketable Record Title Act (‘aka’ The ‘Re-Recording Act’): An Argument That This 30-Year Curative Act Can Extinguish Co-Tenancies”; 87 Oklahoma Bar Journal 27 (October 15, 2016)

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The end
(really just the “beginning”)

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