

Judgment Lien Creation Now Requires A Judgment Affidavit

By Kraettli Q. Epperson

I.

SUMMARY OF NEW LAW

In this article we explore the new procedures — effective November 1, 1988 — for creating a judgment lien on real property in Oklahoma and also discuss the reasons for and problems with the new legislation.

Effective November 1, 1988, a judgment lien on real property of a judgment debtor ("Judgment Lien") is created by presenting for filing an affidavit of judgment ("Judgment Affidavit"), with a certified copy of such *in personam* judgment for money ("Money Judgment") attached thereto and expressly incorporated therein, in the office of the COUNTY clerk in a county where the judgment debtor has real property.¹

This is a change from the prior law that did not require the attachment of an affidavit, but simply allowed a creditor to file and docket a certified copy of the Money Judgment itself with the local COUNTY clerk.² The term "local" COUNTY or COURT clerk is used in this article to make it clear that filing of Money Judgments must be made in the county where the land is located, and not made in a "central" (i.e., statewide) clerk's office, such as making all Uniform Commercial Code ("UCC") business equipment filings in Oklahoma County.

Also effective November 1, 1988, "filing," under 12 O.S. §706, was defined — using substantially the same definition as found in the UCC — as consisting of presentation of the Judgment Affidavit, with a certified copy of the Money Judgment attached, and tender of the filing fee, to the local COUNTY clerk ("Presentation").³

In order to avoid confusion arising from mistakes in preparation of the Judgment Affidavit, the new law provides that if any of the names of the judgment debtors, as shown on the Judgment Affidavit, differ from those shown on the attached Money Judgment itself, there is a lien only on the real property of those debtors whose names appear on both the Judgment Affidavit and on the attached Money Judgment.⁴

II.

DISCUSSION OF THE OLD LAW

Prior to November 1, 1978, a Judgment Lien was created on a judgment debtor's real property in a particular county by filing and docketing (i.e., indexing using the debtor's name) a certified copy of the Money Judgment with the local COURT clerk in the county where real property of the judgment debtor was located.⁵

The Oklahoma Supreme Court had consistently held, prior to November 1, 1978, that a Judgment Lien attached and was perfected as to third parties only upon the completion of both filing and docketing in the local COURT clerk's office. These cases held that presentation for filing alone was not enough to give notice to third parties, but that proper docketing was also a necessity.⁶ Under these cases "filing" consisted of both Presentment to the local COURT clerk and proper "docketing." Proper "docketing," was accomplished by alphabetic indexing of the Money Judgment against the debtor's name in the local COURT clerk's docket.

A pre-1978 attempt was made to have the Oklahoma Supreme Court decide that the "filing"

of a Money Judgment under 12 O.S. 1971, §706 occurred upon simple presentment to the local COURT clerk.⁷ Argument in support of this position was made by analogizing to the definition of "filing" as found in the UCC, but the attempt failed.⁸

The long established definition of "filing" as used when referring to the reception and recordation of documents into the local COUNTY clerk's land records is that simple Presentment to the COUNTY clerk was enough and that proper indexing was not necessary to give constructive notice to third parties.⁹

As a result of the continuing efforts of several real property attorneys and other parties to centralize the filing of all documents affecting title to land into the offices of the local COUNTY clerks, the Judgment Lien statute was changed, effective November 1, 1978, to shift the filing of the Money Judgment from the local COURT clerk's office to the local COUNTY clerk's office.¹⁰

Therefore, as of November 1, 1978, pursuant to 12 O.S. Supp. 1978, §706, the local COUNTY clerk's office added to its existing duties — which already included the recording of the traditional conveyancing instruments, such as deeds, mortgages, easements, and similar items — the duty to file and index Money Judgments as well.

While the Judgment Lien statute, as revised on November 1, 1978, contained amended language which reduced the requirements for creation of a Judgment Lien from being "filed and docketed" to simply being "filed," the Oklahoma Supreme Court held in 1985 that a Money Judgment is not "filed" so as to give third parties notice until there is proper docketing as to the debtor's name.¹¹

The *Will Rogers* case (*supra*), decided in 1985, thereby established the rule that there were two types of filing criteria in the local COUNTY clerks' records in order to give constructive notice, one for Money Judgments requiring proper docketing and one for other instruments affecting real property requiring only presentation. In fact, the underlying policy discussion used by the Court in this *Will Rogers* case suggests that "filing" should include proper "docketing" to perfect an interest arising from any "lien, mortgage or judgment."¹²

After *Will Rogers* and until November 1, 1988,

"filing," as described in 12 O.S. Supp. 1983, §706, did not occur until both presentation for filing and "docketing" had taken place. However, the 1988 revisions to 12 O.S. Supp. 1983, §706 make it clear that presentation and tender of the filing fee is enough in itself to create a Judgment Lien.¹³

III.

ENACTMENT OF NEW LAW

The COURT clerks were given protection against personal liability for mis-docketing of judgments by the amendment of 12 O.S. Supp. 1981, §25 as of November 1, 1985.¹⁴ The revisions were ambiguous as to whether they protected "COURT clerks" or "COUNTY clerks," (1) because both the pre-1985 and the post-1985 versions of 12 O.S. §25 say "clerk" without distinguishing between "COURT clerk" and "COUNTY clerk" and (2) because Section 25 is located in that part of Title 12 dealing with the COURT clerk's records.¹⁵ The apparent reason for the COURT clerks being granted this relief was due to the difficulty the COURT clerks' staffs were having in understanding the language of Money Judgments clearly enough to identify the judgment debtors and the amounts of the judgments.

However, as of the date of enactment of 12 O.S. Supp. 1985, §25, only the COUNTY clerk had any responsibility relating to the filing of Money Judgments to create a Judgment Lien under 12 O.S. Supp. 1983, §706.¹⁶ Therefore, the granting of such protection seems to have been pointless.

Therefore, to reduce the probability that the COUNTY clerks would mis-docket Money Judgments, Oklahoma's COUNTY clerk's and COURT clerk's statewide associations supported Senate Bill 370 ("Bill") during the 1988 legislative session. The Bill originally only addressed the need to revise 12 O.S. 1981, §706 to require that the Money Judgments being filed with the COUNTY clerk have an informational Judgment Affidavit filed with it, listing, among other information, the judgment debtors' names.¹⁷

Additional language was added during consideration of the Bill (1) to provide uniformity in the definition of "filing" relating to all documents presented for filing in the records of the local COUNTY clerk (*i.e.*, treating both Money Judgments and other real property related documents the same), and (2) to reduce the confu-

KRAETTLI Q. EPPERSON

is a Partner in the Oklahoma City law firm of Ames, Ashabraner, Taylor, Lawrence, Laudick & Morgan. He received a J.D. Degree from Oklahoma City University School of Law, is Co-Chairman of the OBA Real Property Section Title Examination Standards Committee, a member of the ABA Real Property Section Legislative Liaison Committee, Chairman of the ABA State Customs and Practices Subcommittee, and an Adjunct Professor at the OCU School of Law. His main area of practice is in real estate and commercial law. Mr. Epperson was formerly General Counsel for American First Land Title Insurance Co. (now American Guaranty Title Company).



sion which could be caused if any of the names on the Judgment Affidavit and the Money Judgment did not match.¹⁸

The introduction of a Judgment Affidavit into the land recording system will create the otherwise non-existent opportunity for confusion in the record title. In particular, the creditor drafting the Judgment Affidavit could either inadvertently or intentionally cloud the record by adding extra names as judgment debtors or by omitting names of judgment debtors. An additional problem is the question of how a title examiner is expected to handle a post-October 31, 1988 Money Judgment that is seen in an abstract which does not have the Judgment Affidavit affixed. The Money Judgment should not have been accepted for filing, and, if filed, should not be shown in the abstract since no lien attaches unless a Judgment Affidavit is present. In a similar vein, the question arises as to whether the COUNTY clerk's staff is going to be able to instantly decide whether to accept or reject a judgment that is presented to them which does not have a Judgment Affidavit affixed, since it might deal with property issues and not money. However, despite these potential problems, it is unlikely that the protection given the COUNTY clerks and COURT clerks, in 12 O.S. Supp. 1985, §25 and in 12 O.S. Supp. 1988, §706 by the introduction of the mandatory use of a Judgment Affidavit, will be repealed.

IV.

FURTHER CHANGES NEEDED

While the enactment of Senate Bill 370 amending 12 O.S. Supp. 1983, §706 as of November 1, 1988 has remedied several existing problems, it has left unresolved several other matters, such as:

1. Although there are cases on point, the time of initial "attachment" of a Judgment Lien (i.e., creation of a claim of interest in the real property in the creditor which can be enforced against a subsequent encumbrancer or purchaser with actual notice), could be more clearly defined in the statute;¹⁹

2. The COURT clerks understand they are still required, by statute, to maintain a Judgment Docket, although it currently serves no apparent purpose, and creditors' attorneys face the dilemma of deciding whether filing and docketing in the COURT clerk's Judgment Docket, in addition to presentation for filing in the COUNTY clerk's Judgment Docket, is necessary in order for attachment and perfection of a Judgment Lien to occur;²⁰

3. The COUNTY clerks are uncertain whether they, or just the COURT clerks, are protected by the hold harmless language of 12 O.S. Supp. 1985, §25²¹; and

4. The statute relating to Small Claims Judgments, 12 O.S. Supp. 1982, §1770, calling for a "Statement of Judgment" to be "filed" in the office of the COUNTY clerk needs to be reviewed and, if necessary, revised to be consistent with the definitions and other language in the new 12 O.S. Supp. 1988, §706.²²

V.

CONCLUSION

In conclusion, all Money Judgments filed with a local COUNTY clerk on or after November 1, 1988, must — in order to become attached and to be

perfected — be accompanied by a Judgment Affidavit, and such filing is effective as of the moment of presentation for filing and tendering of the filing fee. However, certain ambiguities continue to exist and need to be remedied by further amendments to 12 O.S. Supp. 1988, §706 and 12 O.S. Supp. 1985, §25.

Suggestions and comments on this article and on possible new statutory language are hereby heartily solicited.

1. 1988 Okla. Sess. Laws ch. 102, section 1, 12 O.S. Supp. 1988, §706 now provides:

A. Judgments of courts of record of this state and of the United States shall be liens on the real estate of the judgment debtor within a county after a certified copy of such judgment with an affidavit of judgment in the form as provided for in Section 25 of this title attached on the front of, and incorporating by reference, such judgment has been filed in the office of the county clerk in that county. No judgment, whether rendered by a court of the state or of the United States, shall be a lien on the real estate of a judgment debtor in any county until it has been filed in this manner. Execution shall be issued only from the court in which the judgment is rendered. Such judgment lien shall only affect the real estate of judgment debtors whose name appears on both the affidavit of judgment and the attached judgment. Presentation of such affidavit of judgment with a certified copy attached of the judgment described in such affidavit, and tender of the filing fee, shall, upon acceptance by the county clerk, constitute filing under this section.

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

[The bold faced part is new.]

The official post-October 31, 1988 Judgment Affidavit form [i.e., S.A.&I. 4070 (1988)] is as follows:

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

v.

Case No. _____

AFFIDAVIT OF JUDGMENT

STATE OF OKLAHOMA)

)ss.

_____ COUNTY)

_____ of lawful age,
first being duly sworn, deposes and says:

That on the _____ day of _____, 19____, judgment was rendered in the above-styled and number cause as follows:

*AGAINST	IN FAVOR OF	AMOUNT & COST	PURPOSE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

LEGAL DESCRIPTION: _____

Further, that the county clerk shall enter on the judgment docket a statement based on this information, in compliance with 12 O.S. Supp. 1988, §706.

Further, your affiant sayeth not.

NAME: _____

TITLE: _____

ADDRESS: _____

Subscribed and sworn to before me this
day of _____, 19____.

Notary Public

My commission expires: _____

*If judgment be rendered against several persons, list in alphabetical order.

2. 12 O.S. Supp. 1983, §706 provided:

A. Judgments of courts of record of this state and of the United States shall be liens on the real estate within a county after a certified copy of such judgment

ment has been filed in the office of the county clerk in that county. No judgment, whether rendered by a court of the state or of the United States, shall be a lien on the real estate of a judgment debtor in any county until it has been filed in this manner. Execution shall be issued only from the court in which the judgment is rendered. [emphasis added.]

3. See *supra* note 1 and accompanying text; and 12A O.S. Supp. 1987, §9-403(1) provides:

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

* * *

In order to have a "certified copy of the Money Judgment" to file with the COUNTY clerk, the Money Judgment must be presented to the COURT clerk for filing and then a photocopy can be "certified" by the COURT clerk.

4. See *supra* note 1 and accompanying text.

5. 12 O.S. 1971, §706 provided:

Judgments of courts of record of this State, except County Courts, and of the United States rendered within this State, shall be liens on the real estate of the judgment debtor within the county in which the judgment is rendered from and after the time such judgment is entered on the judgment docket, but such judgment shall not be a lien on the real estate of the judgment debtor in any other county in this State until a certified copy of such judgment shall be filed and docketed in such county, as hereinafter provided, and shall not be a lien on the real estate of the judgment debtor in any county in the State, except in all counties where a permanent record of the judgments of the United States Court is kept open to the public, until a certified copy of such judgment shall be filed and docketed in the office of the State District Court Clerk of the county wherein the real estate is situated. An attested copy of the Journal Entry of any such judgment, together with a statement of the costs taxed against the debtor in the case, may be filed in the office of the clerk of the District Court of any county and such judgment shall be a lien on the real estate of the debtor within that county from and after the date of filing and entering such judgment on the judgment docket. The Clerk shall enter judgment on the appearance and judgment dockets in the same manner and within the same time after such judgment is filed in his office as if rendered in the court of which he is clerk. Execution shall only be issued from the court in which the judgment is rendered, or in which a transcript of a county court judgment is first filed.

6. In *Long Bell Lumber Co. v. Etter*, 123 Okla. 54, 55, 251 P. 997, Syllabus and at 998 (1926) the Court said: Judgment liens, being statutory and in derogation of the common law, attach only where the requirements of the statute have been, at least substantially, complied with.

* * *

The statutes are plain and explicit as to time when a judgment takes effect as a lien on the real estate of a debtor, and as to the manner of docketing same when there is more than one defendant. As pointed out by Freeman, a judgment may become a lien from

the date of its rendition, from the date of its docketing, or from the date of its docketing and the performance of some other act required, according to the terms of the statutes of different states. However, in this state, the effective date is the entry of the judgment upon the judgment docket in the manner provided. [emphasis added.]

See also *In Re Staples*, 1 F. Supp. 620 (N.D. Okla. 1932); *Bovasso v. Sample*, 649 P.2d 521 (Okla. 1982); *Joplin Corporation v. State Ex Rel. Grimes*, 570 P.2d 1161 (Okla. 1977); *Knight v. Armstrong*, 303 P.2d 421 (Okla. 1956); *Hildebrand v. Harrison*, 288 P.2d 399 (Okla. 1955); *Smith v. Citizens National Bank*, 264 P.2d 333 (Okla. 1953); *Barrett v. Barrett*, 207 Okla. 234, 249 P.2d 88 (1952); *Smith v. Citizens National Bank*, 204 Okla. 586, 232 P.2d 618 (1951); *Wilson v. First National Bank*, 184 Okla. 518, 88 P.2d 628 (1939); *Walters Motor Co. v. Musgrove*, 181 Okla. 540, 75 P.2d 471 (1938); *Richard v. Tynes*, 149 Okla. 235, 300 P. 297 (1931); Okla. AG Opinion No. 77-275 (Nov. 30, 1977); and Charles C. Green, "The Unrecorded Mortgage vis-a-vis A Judgment Lien," 47 OBJ 121.

7. *Wilson*, 1984 Okla. 518, 88 P.2d 628.

8. See *supra* note 3 and accompanying text; 12A O.S. §9-403(1).

9. As stated in *Hodges v. Simpson*, 89 Okla. 80, 213 P. 737 (1922):

By these two opinions [*Covington v. Fisher* (reality) and *Dabney v. Hatheway* (personalty)] this court has become committed to an important rule of interpretation, and it would not now be right and equitable for this court at this late day to change such position as it might be disposed to do if it were a question of the first impression. We will not, therefore, review the merits of the two positions or the reasons therefore.

The principle adopted in these two opinions and which we hold to be the rule in this state seem to be succinctly stated in the following language, taken from 23 R.C.L. 227, §90:

"Whether the grantee in an instrument, or a subsequent purchaser, shall suffer from the mistake or omission of the recorder in registering it or neglecting to register it, is determined by some courts by applying the rule that, where a grantee has duly deposited his deed with the proper officer for record, he has performed his whole duty, and consequently the subsequent mistake or neglect of the recorder will not affect him . . . and no duty rests on the grantee to see that the recorder makes the record correctly. From the moment the instrument is duly filed with the recording officer, according to this view, it is notice of what it contains, and not of what the recording officer may make it show on the record. . . . This rule is especially applicable under statutes which provide that an instrument shall be operative as a record from the time it is filed for record. To hold otherwise under a statute of that kind would practically destroy the operation of the clause making the instrument effective as notice as soon as it is deposited for record."

The language of §1155, R.L. 1910 reads as follows: "Every conveyance of real property acknowledg-

ed or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is constructive notice of the contents thereof to subsequent purchasers, mortgagees, incumbrancers or creditors."

The language of our statute on recordation seems to be of the same language as the statutes discussed in the quoted provision of R.C.L., heretofore quoted.

See also *McMillan v. First National Bank & Trust Company of Ponca City*, 407 F. Supp. 799 (W.D. Okla., Bky, 1975); *Gardner v. City of McAlester*, 198 Okla. 547, 179 P.2d 894 (1946); *Wilson v. First National Bank*, 184 Okla. 518, 88 P.2d 628 (1939); *Twyford v. Stephens*, 183 Okla. 534, 83 P.2d 578 (1938); *Terrell v. Scott, et al.*, 129 Okla. 78, 262 P. 1071 (1927); *New Era Milling Co. v. Thompson*, 107 Okla. 114, 230 P. 486 (1924); *Dabney v. Hatheway*, 51 Okla. 658, 152 P. 77 (1915); and *Covington v. Fisher*, 22 Okla. 207, 97 P. 615 (1908).

10. See *supra* notes 3 and 5 and accompanying text;
12 O.S. Supp. 1978, §706 provides:

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

11. *Will Rogers Bank & Trust Company v. First National Bank of Tahlequah*, 710 P.2d 752 (Okla. 1985).
12. *Will Rogers* 710 P.2d at 754, provides in pertinent part:

It has long been established that a judgment for money only does not become a lien on the realty of a judgment debtor unless and until it is duly entered on the judgment docket of the county in which the realty is located. *Smith v. Citizens National Bank in Okmulgee*, 232 P.2d 618 (Okla. 1951). We believe this to be the better rule. We remain unpersuaded by Appellant's urgings that the Oklahoma legislature by its revision of §706 in 1978 intended to require only the physical delivery of an in personam money judgment to the county clerk's office to secure a lien upon the judgment debtor's real property in that county. The very reason for requiring any filing in the office of the county clerk of any county is to give notice to the world. The filing requirements of §706 therefore must be construed as directing the performance of all those incidents of filing necessary to give notice of the lien claim to inquiring third parties. Otherwise, as submitted by First National Bank of Tahlequah, a county clerk could throw all the documents in an apple barrel in his or her office, through which the public could dig to determine if any person had a lien, mortgage or judgment against them or their property. We conclude the filing requirement of §706 encompasses more than literally stamping the document "filed;" it behooves the county clerk to properly record or index the document as an incident of his or her statutory filing obligation.

tion. Filing, within the meaning of §706, includes proper recordation of the subject matter in a manner so as to render orderly the retrieval of necessary information.

The erroneous recordation and misindexing of the Appellant's Oklahoma District Court money judgment against Morgan rendered unperfected the lien claimed on Morgan's realty in Cherokee County. The right of Harris, a bona fide purchaser for value, and other third parties without notice, to the realty is superior to the right of Appellant.

13. See *supra* note 1 and accompanying text.
14. 12 O.S. 1981, §25 provided:

The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in alphabetical order, and it shall be the duty of the clerk immediately after the rendition of a judgment to enter on said judgment docket a statement containing the name of the parties, the amount and nature of the judgment and costs, and the date of its rendition, and the date on which said judgment is entered on said judgment docket; and if the judgment shall be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order.

Pursuant to *Board of County Commissioners v. Guaranty Loan & Inv. Corp.*, 497 P.2d 423 at 424 (Okla. 1972):

In the absence of a statutory or a constitutional provision creating liability therefor, a county is not liable for damages resulting from wrongful or negligent acts or omissions of its officers or employees in the performance of their public duties.

However, 12 O.S. 1971, §137.3 (enacted after the operative facts of *Guaranty*) provides:

Any elected county officer of counties of three hundred thousand (300,000) population or over may purchase liability insurance coverage not to exceed Fifty Thousand Dollars (\$50,000.00) to pay all losses and damages incurred by an action against such officer, arising out of any act of negligence committed by such elected county official occurring in the operation of his office. The costs of such insurance coverage shall be paid by the county. The costs provided for herein shall be within the approved budget of the officer seeking to purchase the insurance coverage allowed herein.

In *Richard v. Tynes*, 149 Okla. 235, 300 P. 297 (1931) the Court held:

Where the law imposes upon a public officer the performance of ministerial duties in which a private individual has a special or direct interest, such officer will be liable to the individual for any injury which he may proximately sustain in consequence of the failure or the negligence of such officer, either to perform the duty at all, or to perform it properly. *Mechem on Public Officers*, §664.

- 12 O.S. Supp. 1985, §25 provides:

The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in

alphabetical order, and it shall be the duty of the clerk immediately after the rendition of a judgment and the filing, by a party for whom judgment was rendered, of an affidavit of judgment in a form prescribed by the Court Administrator to enter on said judgment docket a statement containing the name of the parties, the amount and nature of the judgment and costs, and the date of its rendition, and the date on which said judgment is entered on said judgment docket; and if the judgment shall be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order.

The clerk shall not be guilty of breach of ministerial duties or be liable to any party for failure to enter a judgment on the judgment docket when no affidavit of judgment is filed as provided for in this section. (emphasis added)

The official pre-November 1, 1988 Judgment Affidavit form is as follows:

IN THE DISTRICT COURT OF _____ COUNTY
STATE OF OKLAHOMA

_____ v. _____ Case No. _____

AFFIDAVIT OF JUDGMENT

STATE OF OKLAHOMA)

)ss.

COUNTY)

_____, of lawful age, first being duly sworn, deposes and says:

That on the _____ day of _____, 19 _____, judgment was rendered in the above styled and numbered cause as follows:

Judgment in favor of _____
against _____

in the amount of _____ plus attorney fees in the amount of _____ and the costs of the action.

Further, that the court clerk shall enter on the judgment docket a statement based on this information, in compliance with 12 O.S. Supp. 1985, §25.

Further, your affiant sayeth not.

Name: _____

Subscribed and sworn to before me this _____ day of _____ 19 _____.

Notary Public

My Commission Expires: _____

15. See e.g., 12 O.S. §23 (dealing with the Appearance Docket) and 12 O.S. §26 (dealing with the Execution Docket).

16. See *supra* note 2 and accompanying text.

17. Senate Bill 370 as originally introduced provided, in pertinent part:

A. Judgments of courts of record of this state and of the United States shall be liens on the real estate of the judgment debtor within a county after a certified copy of such judgment and an affidavit of judgment as provided for in Section 25 of this title has been filed in the office of the county clerk in that county. No judgment, whether rendered by a court of the state or of the United States, shall be a lien on the real estate of a judgment debtor in any county until it has been filed in this manner. Execution shall be issued only from the court in which the judgment is rendered.

18. See *supra* note 1 and accompanying text; a letter dated April 15, 1988 from Canadian County Clerk Mark Mishoe to an attorney stated:

April 15, 1988

David O. Beal

Attorney at Law

4200 N.W. 23rd Street

Oklahoma City, OK 73107-2678

RE: Senate Bill 370

Dear Mr. Beal:

Senator Capps asked me to respond to your letter to him wherein you inquired about the purpose of Senate Bill 370. I am the Legislative Chairman for the County Clerk's Association and am the one responsible for requesting this legislation. Our association worked in conjunction with the Court Clerk's Association and Kraettli Epperson who is a member of the Real Property Section of the Oklahoma Bar Association.

The County Clerks felt this legislation was needed as a result of the Supreme Court decision in the case of Will Rogers Bank & Trust Company vs. First National Bank of Tahlequah, 710 Pacific Reporter, 2nd Series, 752. The case basically states the mere filing of a judgment does not perfect judgment liens, judgment is perfected only after the judgment has been indexed properly. Indexing occurs in many counties some time after the document has been file stamped. Properly indexing judgments requires County Clerks or their deputies to interpret the judgments. Many of the judgments we receive are very complicated and require a legal background to understand. Unfortunately, most of the County Clerks and their deputies don't understand "legalese." On all of the other documents we file, the documents speak for themselves, rather than our having to interpret what has occurred.

Senate Bill 370 primarily does two things to correct the Will Rogers decision. First, a judgment is now perfected once it has been accepted by the County Clerk, the filing fee is paid, and the document receives a filing stamp. This is consistent with all of the other documents we handle. Second, a County Clerk or deputy can use an Affidavit of Judgment to easily index the document without having to make a legal interpretation. The Court Clerks

already have a requirement that an Affidavit of Judgment be filed with the actual Judgment and the County Clerks want the same benefit. We feel this will insure that judgments are properly indexed and protect the judgment creditor.

I hope I have satisfactorily answered your questions regarding Senate Bill 370. If you have further questions, please give me a call.

Sincerely,
Mark Mishoe
Canadian County Clerk

cc: Senator Gilmer Capps
Kraettli Epperson

19. *Bovasso, supra*, at 524 holds: "Thus it is apparent that plaintiff's [money] judgment did not become a lien on real estate owned by Florence when rendered, but only upon compliance with §706." and *Wilson, supra*, 184 Okla. at 519, 88 P.2d at 629 provides:

The two lines of decisions construe separate statutes respectively: The statute relating to judgment liens, Sec. 690, C.O.S. 1921, 12 O. S. A. §706 provides that the lien attaches "from and after the time such judgment is entered on the judgment docket," and the above cases construing the same hold that the lien does not come into existence as to subsequent innocent purchasers until entered upon the judgment docket as provided by the statutes. Such construction seems to have had legislative sanction for it is to be observed that subsequent legislation on the same subject, chapt. 2, art. 2, Sess. Laws 1931, 12 O. S. A. §706, employs the same phraseology.

The statutes construed in the cases dealing with chattel mortgages require only that the mortgage "be filed by depositing the same in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated." 46 O. S. A. §57. Although the statutes prescribe the system to be employed by the county clerk in filing, it was concluded that the depositing of same for filing was sufficient to constitute constructive notice under that statute.

The several opinions are of long standing and should now be regarded as fixing the law with

reference to the respective questions. [emphasis added.]

20. The Appellee Harris argued in its brief in *Will Rogers*, 710 P.2d 752, a post-1978 case, that filing with the Court Clerk was still required. However, the court ignored this part of Appellee's argument.

21. See *supra* note 14; 12 O.S. Supp. 1985, §25.

22. 12 O.S. Supp. 1982, §1770 provides:

A. Judgments rendered under the Small Claims Procedure Act shall become a lien on the real property of the judgment debtor within a county only from and after the time a Statement of Judgment has been filed in the office of the county clerk of that county. When requested, the court clerk shall prepare a Statement of Judgment for the judgment creditor on the form of Statement of Judgment provided by the Administrative Director of Courts of Oklahoma and said Statement of Judgment shall have printed thereon instructions advising the judgment creditor to file the Statement of Judgment in the office of the county clerk.

B. The lien of any small claims judgment when satisfied by payment or otherwise discharged shall be released by the court clerk upon written application by the judgment debtor. The judgment creditor shall be notified of the application by ten (10) days' prior notice mailed by the court clerk to the judgment creditor at the last-known address of the judgment creditor. If there is no response or objection from the judgment creditor within ten (10) days after mailing the notice the court clerk shall show the judgment released. No court hearing shall be required unless requested by a party to the action. When requested, the court clerk shall prepare a Certificate of Release for the judgment debtor on the form of Certificate of Release provided by the Administrative Director of Courts of Oklahoma. Said Certificate of Release shall have printed thereon instructions advising the judgment debtor to file the Certificate of Release in the office of the county clerk. The lien of the judgment will be released once the Certificate of Release is filed in the office of the county clerk.

C. The party filing the application for release shall pay all recording fees and other costs.