

UPDATE ON OKLAHOMA REAL PROPERTY TITLE AUTHORITY:

REVISIONS FOR 2017-2018

(Covering July 1, 2017 to June 30, 2018)

BY:

**KRAETTLI Q. EPPERSON, PLLC
MEE MEE HOGE & EPPERSON, PLLP
50 PENN PLACE
1900 N.W. EXPRESSWAY, SUITE 1400
OKLAHOMA CITY, OKLAHOMA 73118**

PHONE: (405) 848-9100

FAX: (405) 848-9101

E-mail: kqe@meehoge.com

Webpages: www.meehoge.com

www.EppersonLaw.com



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Presented For the:
OBA Real Property Law Section -- 2019
Cleverdon Real Property Roundtable Seminar

At:
OKC, OK -- May 30, 2019
Tulsa, OK -- May 31, 2019



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**KRAETTLI Q. EPPERSON
ATTORNEY-AT-LAW**

PROFESSIONAL:

- **Partner: MEE MEE HOGE & EPPERSON, PLLP (10-person law firm)**
- **1900 N.W. Expressway, 50 Penn Place, Suite 1400, Oklahoma City, OK 73118**
- **Voice: (405) 848-9100; E-mail: kqe@MeeHoge.com; Website: www.EppersonLaw.com**
- **AV rated; Super Lawyers: 2017-2018 (Real Estate)**

EDUCATION:

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

PRACTICE AREAS:

- **Mineral/Surface Title Matters: Curative, Litigation, Expert Consultant/Witness, and Opinions**
- **Mediations and Arbitrations**
- **HOA and Condo Restrictions Interpretation and Enforcement**

SUCCESSFUL APPELLATE CASES AND SAMPLE ENGAGEMENTS:

- **Testifying Expert: Reformation of Deeds (Miller v. Nagel, Cert. Denied No. 115, 655)**
- **Amicus Brief: Enforcement of Ancient Probate (Bebout v. Ewell, 2017 OK 22)**
- **Expert Opinion: Reformation of Deeds (Scott v. Peters, 2016 OK 16)**
- **Arbitrator: Horizontal Well Damages to Vertical Wells**
- **Court-appointed Receiver for 5 Abstract Companies**
- **Secured AG Opinion: Safe Distance Between Residences and Well Sites (2009 OK AG 5)**
- **Arbitration Assistance: Defended Billion Dollar PSA Title Dispute**



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SPECIAL ACTIVITIES:

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

SELECTED PUBLICATIONS:

- ***“Constructive Notice: Oklahoma’s Hybrid System Affecting Surface and Mineral Interests”, 80 OBJ 40 (January 2018)***
- ***“The Oklahoma Marketable Record Title Act (aka The Re-Recording Act): An Argument That This 30-Year Curative Act Can Extinguish Co-Tenancies”, 87 OBJ 27, (October 15, 2015)***
- ***“Marketable Record Title: A Deed Which Conveys Only The Grantor’s ‘Right, Title And Interest Can Be A ‘Root Of Title’”, 85 OBJ 1104 (May 17, 2014)***



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I. INTRODUCTION

The determination of the existence and the holder of “valid” title (i.e., enforceable between the parties), and “marketable” title (i.e., determinable “of record”, and relied upon by third party grantees and lenders) to a parcel of real property, requires the application of the current law of the State where the land is located. (60 O.S. §21)



The following materials reflect a listing of selected changes in the law of Oklahoma related to real property title issues, arising over the 12 months following June 30, 2017, including any (1) statutes enacted during the most recent State legislative session, (2) cases from the Oklahoma Supreme Court and the Court of Civil Appeals, and (3) Oklahoma Title Examination Standards adopted (or proposed) during that period.



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II. STATUTORY CHANGES **(see: www.lsb.state.ok.us)**

2018 Final Legislative Report Oklahoma Title Examination Standards Committee 2nd Session of the 56th Legislature May 19, 2018



Proposed Legislation Potentially Affecting **Current Title Standards**

Civil Procedure

SB 1503 Increases response time to amended pleadings from ten days after service to twenty days after service.

Status: Passed out of committee. Passed Senate. Engrossed to House. House passed. Signed by Governor 4/12/2018.



Indian Lands

HR 2606 Federal Legislation - Stigler Act Amendments of 2017. Lands will remain in restricted status regardless of blood quantum. Will not apply where lands were, i) subject to final order by OK district court or US district court determining the decedent's heir or devisees or otherwise determining ownership;



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**ii) conveyed by a decedent's
undetermined heirs or devisees by
deed approved by OK district court;
or iii) conveyed by decedent's
undetermined heirs or devisees of less
than 1/2 Indian blood with or without
district court approval.**

**Status: Subcommittee hearings held
10/4/2017.**



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Liens

SB 1118 Statements attached to medical liens no longer have to be itemized.

**Status: Passed out of committee.
Passed Senate, engrossed to House.
Passed out of House committee.
Passed House, engrossed back to Senate.
Signed by Governor
5/3/2018.**



Oil and Gas

HB 2775

Changes certain aspects of PRSA including ~~erroneously withheld payments~~, interest, interpleading of royalties and ~~remittance of royalties to unclaimed property fund~~.

Status: Second reading referred to Rules. Passed committee. Passed House, engrossed to Senate. Senate passed. Signed by Governor 4/9/2018.



Real Property

HB 1334 Carry over from 2017. Allows Board of Education of any school district to transfer title to unimproved real property to a ~~municipal or other local~~ housing authority ~~in order for such housing authority to construct single family dwellings or multifamily dwellings on such property~~ formed pursuant to the provisions of 63 O.S. §1057 (Creation of Indian Housing Authorities).



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Status: No 2018 activity. Engrossed to Senate in 2017. Passed committee, passed Senate, engrossed to House. Approved by Governor 5/1/2018.



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Tax

SB 1059 Changes the definition of "assessed value" regarding ad valorem taxes and changes notice requirements.

Status: Referred to Appropriations Subcommittee Finance. Passed committee, passed Senate, engrossed to House. Passed House, referred for engrossment back to Senate. Signed by Governor 5/8/2018.



Title Companies

HB 1826 Carry over from 2017. Requires title company to provide certified copies of all recorded covenants and restrictions to the buyer as part of the closing (previously was upon request of the buyer). Closing company may charge no more than \$25.00 for the copy. The copy shall be provided either prior to or at the time of closing either by mail to buyer's last -known address, hand-delivered , or electronically delivered.



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Status: ~~No 2018 activity.~~ In 2017, passed House, engrossed to Senate, engrossed back to House with amendments, engrossed back to Senate with conference amendments. Conference granted back to Senate with Conference amendments. Conference granted 4/12/2018. Lots of activity back and forth. Approved by Governor 5/10/2018.



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Water Rights

SB 1147 Modifies jurisdiction of DEQ regarding water rights. Adds responsibility for development and utilization of policies and requirements for implementation of Oklahoma Groundwater Quality Standards to the extent that implementation of such standards are within the scope of the Department's jurisdiction.



**Status: Passed out of committee.
Passed Senate, engrossed to House.
Passed House committee. Passed
House, engrossed back to Senate.
Signed by Governor 4/26/2018.**



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Wind Energy

SB 1576 Prohibits construction or operation of proposed facility or expansion if it has a "significant adverse impact on the mission, training or operations of any military installation or branch of military." A noninterference letter must be obtained. Provisions for a Determination of No Hazard or mitigation plan to be submitted to the Corporation Commission.



Corporation Commission to promulgate rules and regulations for the implementation of this section of the Act. Requires submission of notification to the Oklahoma Strategic Military Planning Commission who will notify local base commanders.

Status: Second reading referred to Energy. Passed committee, passed Senate, engrossed to House. Passed House. Referred to engrossment back to Senate. House amendments adopted and passed. Signed by Governor 5/2/2018.



Prepared by Rhonda McLean, Attorney, Munson & McMillin, A Professional Corporation, (405) 513-7707, rmclean@munsonmcmillin.com.

With special thanks to Ryan Schaller for his forms and guidance.



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OKLAHOMA SUPREME COURT CASES: **JULY 1, 2017 – JUNE 30, 2018**



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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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**What percentage of Petitions for
Cert are Granted by the OK SUP
Ct?**

A.15%

B.40%

C.65%

D.80%

**What percentage of Petitions for
Cert are Granted by the OK SUP
Ct?**

A.15%

**What percentage of Petitions for
Cert which are Granted are
Reversed by the OK SUP Ct?**

A.100%

B.95%

C.65%

D.55%

**What percentage of Petitions for
Cert which are Granted are
Reversed by the OK SUP Ct?**

A. 100%

B. 95%

A. OKLAHOMA SUPREME COURT CASES
(JULY 1, 2017-JUNE 30, 2018)
LIST OF CASES

| NO. | TOPIC | | CASE | OLAHOMA CITATION | DECIDED |
|----------------------------------|------------------------|---|--|------------------|------------|
| | GENERAL | SPECIFIC | | | MANDATE |
| | | | | | |
| A. <u>OKLAHOMA SUPREME COURT</u> | | | | | |
| 1 | Summary Judgment | Mortgage Foreclosure Summary Judgment Premature When Partial Payments Made | Green Tree Servicing LLC v. Dalke | 2017 OK 74 | 9/26/2017 |
| | | | | | 11/14/2017 |
| 2 | Colorado Judgment Lien | When Does Colorado Judgment Lien on Oklahoma Real Property Lapse | Taracorp v. Dailey | 2018 OK 32 | 4/24/2018 |
| | | | | | 7/11/2018 |
| 3 | Ad Valorem Taxes | Recovery of Misallocated Ad Valorem Taxes to School Districts | Independent School District No. 54 v. Independent School District No. 67 | 2018 OK 34 | 4/24/2018 |
| | | | | | 5/24/2018 |
| 4 | Realtor's Commission | Oral Misrepresentation of Contents of Realtor's Listing Agreement as to Excluded Buyers | Green Meadow Realty Co. v. Gillock | 2018 OK 42 | 5/15/2018 |
| | | | | | 6/13/2018 |
| 5 | Prevailing Party | Defendant's Post-Petition Payment Precludes Money Judgment | Tulsa Adjustment Bureau v. Calnan | 2018 OK 60 | 6/26/2018 |
| | | | | | 10/10/2018 |



1. GREEN TREE SERVICING LLC v. **DALKE** **(2017 OK 74)**

• **GENERAL TOPIC:**
SUMMARY JUDGMENT

• **SPECIFIC TOPIC:**
MORTGAGE FORECLOSURE SUMMARY
JUDGMENT WHEN PARTIAL PAYMENTS
MADE



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- **HOLDING:**

Mortgage foreclosure summary judgment premature when there is evidence of partial payment and bad faith through multiple lies and contradictory instructions.



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• **FACTS:**

Defendant borrowed money (\$39,877) to purchase a mobile home; interest payments over 15 years would total \$146,531; after becoming in arrears for 6 months (owing \$3,346) a check for \$1,454 towards the default was sent to lender by Choctaw Nation and was cashed; no credit for the partial payment was given and a foreclosure lawsuit was filed, for the whole amount; defendant offered to pay the balance of the arrearage, but the lender refused to accept a “second check”; defendant alleged he had a written right to reinstate the loan.



• TRIAL COURT RULING:

Defendant was “pro se” and trial court granted summary judgment to lender for full amount; defendant secure a lawyer and had the hearing on the summary judgment reset, with the summary judgment in favor of the lender granted again; defendant appealed.



•COURT OF CIVIL APPEALS RULING: **Affirmed summary judgment.**



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• SUPREME COURT RULING:

Vacated court of civil appeals opinion and reversed trial court; evidence was in conflict on whether a partial payment was tendered and accepted or rejected; it was undisputed that defendant had the right to reinstate and it was disputed whether defendant was prevented from reinstatement through the bad faith of the lender, and by deceptive and unfair practices.



2. TARACORP v. DAILEY (2018 OK 32)

- **GENERAL TOPIC:**

COLORADO JUDGMENT LIEN

- **SPECIFIC TOPIC:**

**WHEN DOES A COLORADO
JUDGMENT LIEN REGISTERED IN
OKLAHOMA AND PERFECTED
AGAINST OKLAHOMA PROPERTY
LAPSE**



•HOLDING:

A Colorado money judgment, which under Colorado law lasts 20 years, can be asserted and reasserted as a lien in Oklahoma even after the 5-year Oklahoma judgment lien dormancy deadline passes.



FACTS:

Creditor secured a money judgment in Colorado (\$152,000) in 2007, and registered it in Pot. County in 2007, and did nothing further, until in 2016 he registered it in Marshall County and perfected a lien. Debtors sought to argue that the 5-year limitation on enforcing judgments in Oklahoma made it unenforceable.



- **TRIAL COURT RULING:**

Trial court granted debtor defendants' motion to squash the Colorado judgment which had been filed as a judgment lien in one Oklahoma county, but was not enforced, and then, over 5 years later (when it would have been dormant if it was an Oklahoma judgment), filed it in another Oklahoma County to enforce it.



- **COURT OF CIVIL APPEALS RULING:**
COCA vacated the trial court ruling and remanded for further proceedings.



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•SUPREME COURT RULING:

Supreme court retained the case, and ruled that a foreign judgment which is not dormant in the state of origin (Colorado) can be registered and filed as a lien multiple times in Oklahoma. Full faith and credit must be given to the foreign judgment. This is even though the Uniform Enforcement of Foreign Judgments Act provides that foreign judgments will be treated the same as if they were initially issued in Oklahoma.



**3. INDEPENDENT SCHOOL DISTRICT NO. 54
v. INDEPENDENT SCHOOL DISTRICT NO. 67
(a/k/a STROUD v. CUSHING AND WELLSTON
(2018 OK 34)**

**• GENERAL TOPIC:
AD VALOREM TAXES**

**• SPECIFIC TOPIC:
RECOVERY OF MISALLOCATED AD
VALOREM TAXES TO SCHOOL DISTRICTS**



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•HOLDING:

Where lands are misidentified as being in a different school district, and such ad valorem taxes are sent to the wrong school district, such misdirected funds cannot be recovered from the other district where the state allocation of additional funds offset such losses.



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FACTS:

Ad valorem taxes were allocated to the wrong school districts through no fault of the losing or gaining districts. The gaining districts refused to refund the money. The amount of normal additional supplemental state funding to the losing district offset such shortfall, and the gaining districts also received less state aid. So it was “zero” net result.



• TRIAL COURT RULING:

Trial court granted judgments against the two districts receiving excess ad valorem tax funds.



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•COURT OF CIVIL APPEALS RULING:
[NONE]

•SUPREME COURT RULING:

Supreme Court held that because the error in allocating the taxes was not the fault of any district, and because the losing district received exactly the same amount it was entitled to due to the increase in state aid, there was no justification for requiring any repayments. Trial court was reversed and remanded.



4. GREEN MEADOWS REALTY CO. v. **GILLOCK** **(2018 OK 42)**

- **GENERAL TOPIC:**

REALTOR'S COMMISSION

- **SPECIFIC TOPIC:**

**ORAL MISREPRESENTATION OF CONTENTS
OF REALTOR'S LISTING AGREEMENT AS TO
EXCLUDED BUYERS**



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- **HOLDING:**

Where realtor allegedly orally agreed to exclude a potential buyer, the signing of an addendum only limiting such exclusion to a limited time, there are facts in dispute, and summary judgment is not appropriate.



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- **FACTS:**

Seller engaged realtor and allegedly directed realtor to totally exclude certain buyers. Realtor's listing agreement only excluded that buyer for a limited time. Seller sold directly to the excluded buyer outside the exclusion period. Realtor requested his commission, and seller refused, claiming the buyer was to be totally excluded.



- **TRIAL COURT RULING:**

Trial court granted realtor summary judgment because buyers signed the agreement and had a chance to read it, and the sale was outside the time limit.



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- **COURT OF CIVIL APPEALS RULING:**
COCA affirmed on realtor's claim, but reversed on denial of owners' counterclaim.



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- **SUPREME COURT RULING:**

Supreme Court reversed on all claims due to owners' right to assert and prove their oral agreement with realtor to totally exclude certain buyers.



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5. TULSA ADJUSTMENT BUREAU v. **CALNAN** **(2018 OK 60)**

•GENERAL TOPIC:

PREVAILING PARTY STATUS

•SPECIFIC TOPIC:

**DEFENDANT'S POST-PETITION
PAYMENT PRECLUDES MONEY
JUDGMENT AND ATTORNEY FEES**



- **HOLDING:**

Where Defendant fully pays the debt immediately after the petition is filed, the Plaintiff does not “prevail” because he was not “awarded some modicum of monetary relief”, and therefore is not entitled to attorney fees.



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- **FACTS:**

Debtor was sued for health care related debts, and, before answering the Petition, the debtor paid the debt in full, and filed an answer and counterclaim asserting full payment. Lender cashed the check.



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- **TRIAL COURT RULING:**
Trial court entered judgment for creditor including attorney fees.



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- **COURT OF CIVIL APPEALS RULING:**
[NA]

- **SUPREME COURT RULING:**

Supreme Court retained appeal, and then reversed and remanded trial court because creditor was not the “prevailing party” and, therefore, is not entitled to attorney fees. It is the debtor who is the prevailing party.



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• [AUTHOR'S COMMENT:

In Footnote 7, the Supreme Court makes the suggestion that the creditor had only two options: (1) accept payment and dismiss the case, waiving its own attorney fees, or (2) refuse payment and proceed with the lawsuit. If the creditor had refused to accept payment, it might have been subject to a claim of bad faith, as was held to be a possibility in a simultaneously decided case: Green Tree Servicing LLC v. Dalke (2017 OK 74) -- see above]

OKLAHOMA COURT OF CIVIL APPEALS:
JULY 1, 2017 – JUNE 30, 2018



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B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2017-JUNE 30, 2018)
LIST OF CASES

| NO. | TOPIC | | CASE | OKLAHOMA CITATION | DECIDED |
|--|--------------------------------|--|---|--------------------|------------|
| | | | | | MANDATE |
| | GENERAL | SPECIFIC | | | |
| B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u> | | | | | |
| 6 | Contract Termination | Reasonableness of Contract Termination | Group One Realty, Inc. v. Dahr Properties-Memorial Springs, LLC | 2017 CIV APP 54 | 3/30/2017 |
| | | | | | 10/27/2017 |
| 7 | Timber Damages & Attorney Fees | Measure of Damages to Timber; & Relation of Attorney Fees to Results | Young v. Spencer | 2017 OK CIV APP 58 | 6/9/2017 |
| | | | | | 11/14/2017 |
| 8 | Condemnation Valuation | Use of Other Condemnation Values as Fair Market Value | Kamo Electric Cooperative v. Nichols | 2017 OK CIV APP 60 | 9/11/2017 |
| | | | | | 11/14/2017 |



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B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2017-JUNE 30, 2018)
LIST OF CASES

| NO. | TOPIC | | CASE | OKLAHOMA CITATION | DECIDED |
|---|-------------------------------------|---|-------------------|--------------------|------------|
| | GENERAL | SPECIFIC | | | MANDATE |
| B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u> | | | | | |
| 9 | Substituting Real Party in Interest | Fraudulent Affidavit of Heirship Supports Tort Claim Asserted by Real Party in Interest | Jones v. Stalick | 2017 OK CIV APP 67 | 11/7/2017 |
| | | | | | 12/5/2017 |
| 10 | Section Line Roadway | Requirement to Have Court “Open” Section Line Roadway by “Necessity” | Goodwin v. Blake | 2018 OK CIV APP 20 | 10/30/2017 |
| | | | | | 3/21/2018 |
| 11 | Acquiescence | Does Acquiescence Require Uncertainty as to Boundary? | Salinas v. Sheets | 2018 OK CIV APP 21 | 10/25/2017 |
| | | | | | 3/21/2018 |



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B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2017-JUNE 30, 2018)
LIST OF CASES

| NO. | TOPIC | | CASE | OKLAHOMA CITATION | DECIDED |
|-----|---|---|-----------------------------|--------------------|-----------|
| | GENERAL | SPECIFIC | | | MANDATE |
| | B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u> | | | | |
| 12 | Authentication of Foreign Judgment | Is Lack of Authentication of Foreign Judgment Waivable | Bank of America v. Dasovich | 2018 OK CIV APP 22 | 7/18/2017 |
| | | | | | 3/28/2018 |
| 13 | Owner of Note for Mortgage Foreclosure | Ownership of Note Can Be Proven Through Lost Note Affidavit for Foreclosure | Wells Fargo Bank v. Taylor | 2018 OK CIV APP 24 | 3/9/2018 |
| | | | | | 4/4/2018 |



B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2017-JUNE 30, 2018)
LIST OF CASES

| NO. | TOPIC | | CASE | OKLAHOMA CITATION | DECIDED |
|--|---------------------------------------|---|---|--------------------|-----------|
| | | | | | MANDATE |
| | GENERAL | SPECIFIC | | | |
| B. <u>OKLAHOMA COURT OF CIVIL APPEALS</u> | | | | | |
| 14 | Default Judgment in Collection Action | Need for Motion, Notice and Hearing Before Any Default Judgment | Asset Acceptance v. Pham | 2018 OK CIV APP 26 | 7/7/2016 |
| | | | | | 4/11/2018 |
| 15 | Condemnation | Date for Measure of Damages | State ex rel. Dept. of Transportation v. Pennington | 2018 OK CIV APP 39 | 4/12/2018 |
| | | | | | 5/9/2018 |
| 16 | Condemnation | Method of Condemnation Appraisal | State ex rel. Dept. of Transportation v. H&L Double MC, LLP | 2018 OK CIV APP 54 | 4/10/2018 |
| | | | | | 8/15/2018 |



B. OKLAHOMA COURT OF CIVIL APPEALS CASES
(JULY 1, 2017-JUNE 30, 2018)
LIST OF CASES

| NO. | TOPIC | | CASE | OKLAHOMA CITATION | DECIDED |
|------------------------------------|-------------------------------|---|--------------------|---|------------|
| | | | | | MANDATE |
| | GENERAL | SPECIFIC | | | |
| B. OKLAHOMA COURT OF CIVIL APPEALS | | | | | |
| 17 | Mortgage Foreclosure Standing | Lost Note Affidavit Establishes Standing | HSBC Bank v. Saner | (115604; Apr. 11, 2018; Unpublished) | 12/9/2018 |
| | | | | | 10/17/2018 |
| 18 | Reformation of Deed | Statute of Limitation to Correct Deed Worded Contrary to Partition Order (Tenant in Common Instead of Joint Tenant) | Reasnor v. Davis | 114596; Unpublished, Petition for Cert. Denied, Oct. 2, 2017) | 12/22/2016 |
| | | | | | 10/2/2017 |



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6. GROUP ONE REALTY, INC. v. DAHR PROPERTIES-MEMORIAL SPRINGS, LLC (2017 OK CIV APP 54)

- **GENERAL TOPIC:**
CONTRACT TERMINATION

- **SPECIFIC TOPIC:**
**REASONABLENESS OF CONTRACT
TERMINATION**



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- **HOLDING:**

Where a contract allows one party in their sole discretion to cancel a contract, a “reasonableness” test (rather than no standard or a “good faith” standard) is implied and applicable.



- **FACTS:**

A buyer of real property included an escape clause allowing the buyer, in its sole discretion, to cancel the contract if the buyer could not reach an agreement with a pipeline company on relocating certain underground pipelines, and the buyer terminated the contract.



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- **TRIAL COURT RULING:**

Trial Court granted summary judgment allowing the buyer to terminate the contract based on the buyer's own discretion.



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- **COURT OF CIVIL APPEALS RULING:**
COCA held (1) for a contract to avoid being unenforceable due to being illusory, there must be some consideration in the form of either good faith or other standard (such as “reasonableness”), and (2) due to the absence of affirmative proof of the reasonableness of the buyer’s termination, there can be no summary judgment. Reversed and remanded, and, presumably, the seller would be entitled to complete its discovery.



7. YOUNG v. SPENCER **(2017 OK CIV APP 58)**

- **GENERAL TOPIC:**

TIMBER DAMAGES & ATTORNEY FEES

- **SPECIFIC TOPIC:**

**MEASURE OF DAMAGES TO TIMBER; AND
RELATION OF ATTORNEY FEES TO
RESULTS**



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•HOLDING:

Plaintiff failed to show “before and after” value of land due to damage to land from herbicides; plaintiff’s attorney fees do not have to be reduced to “rural” attorney fee rates; paralegal fees can be recovered if law-related duties; and should be reduced under “Burke” due to difference in large amount sought and small amount recovered.



- **FACTS:**
Farmer over-sprayed herbicides on adjacent farmland killing crops and timber.



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- **TRIAL COURT RULING:**

Plaintiff sought actual damages (\$171,280.60, to be multiplied by 3 to 10 times) and attorney fees (\$74,866.50). Court awarded actual damages (\$22,900) and punitive damages (\$22,900), and attorney fees (\$45,000). Trial court denied timber damages due to absence of proof of “before and after” value of land. Court reduced hourly rates to “local” rates; denied any paralegal fees, since not usually charged locally; refused to allow reconstruction of hourly fee records of deceased counsel; reduced attorney fees due to low recovery of damages compared to amount asked for; and denied experts’ fees as not being “incidental costs” meaning damages.



- **COURT OF CIVIL APPEALS RULING:**
Court affirmed denial of timber damages; increased senior attorney's rates; allowed paralegal fees if non-secretarial work; unable to determine reasonableness of overall fee until other required adjustments are made; and affirmed denial of expert fees as not being "incidental costs" (damages).



8. KAMO ELECTRIC COOPERATIVE
v. NICHOLS
(2017 OK CIV APP 60)

•GENERAL TOPIC:
CONDEMNATION VALUATION

•SPECIFIC TOPIC:
**USE OF OTHER CONDEMNATION
VALUES AS FAIR MARKET VALUE**



•HOLDING:

It is inadmissible to use per acre values for other pre-condemnation utility purchases to determine fair market value for agricultural condemnation computations.



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FACTS:

Utility sought to purchase a 3.9 acre tract for power-line/communications easement over cattle lands. When parties were unable to negotiate a price, a condemnation action was initiated, and the matter went to trial.



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• TRIAL COURT RULING:

At trial the parties agreed that the value for similar agricultural lands sold for \$2,000 per acre. The landowner's appraiser opined that the land "was worth approximately \$8,000 per acre, based on the negotiated acquisition price of similar easements by public utilities in the area." The jury awarded \$7,800 per acre. The utility appealed.



•COURT OF CIVIL APPEALS RULING:

The COCA held that a negotiated acquisition price was not a “fair market” value but a “settlement” value. “Settlement” values are not admissible because the price includes the risk and costs to avoid litigation. An extensive discussion was made to show why this was not a *Daubert* issue, since valuation is not an objective “scientific” matter. This court followed two prior cases holding that “settlement” values were not “fair market” values, even in the face of a case that held that in the context of forced pooling of oil and gas interests you can use other forced pooling values for comparison.



9. JONES v. STALICK (2017 OK CIV APP 67)

- **GENERAL TOPIC:**

**SUBSTITUTING REAL PARTY IN
INTEREST**

- **SPECIFIC TOPIC:**

**FRAUDULENT AFFIDAVIT OF
HEIRSHIP SUPPORTS TORT CLAIM
ASSERTED BY REAL PARTY IN
INTEREST**



•HOLDING:

Holder of mineral title when fraudulent heirship affidavit is filed is the real party in interest, and court will assume the real party in interest is substituted



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FACTS:

When the mother died leaving 5 children, three children filed false affidavits of heirship asserting they were the sole heirs. Such heirs assigned their interest to one of their daughters (Debra). When the children of one of the other heirs (Lawrence) learned of this fraud they sued.



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• TRIAL COURT RULING:

A determination was made that Lawrence was the real party interest at the time that the false affidavit was filed, and that he should be added as a necessary party. His two daughters (plaintiffs) were determined to not have a claim, and Lawrence did not timely file an amended petition. The claims of Lawrence and his two daughters were dismissed.



•COURT OF CIVIL APPEALS RULING:

The COCA held that Lawrence should have been treated as being substituted as the Plaintiff/real party in interest, and reversed the trial court. The COCA held that Lawrence could not assign his tort claims and therefore affirmed the dismissal of his daughters' claims.



10. GOODWIN v. BLAKE **(2018 OK CIV APP 20)**

•GENERAL TOPIC:
SECTION LINE ROADWAY

•SPECIFIC TOPIC:
**REQUIREMENT TO HAVE COURT
“OPEN” SECTION LINE ROADWAY
BY “NECESSITY”**



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•HOLDING:

Court order is not necessary to confirm the existence of an “unopened” access section line roadway, but the court must establish an easement by necessity and define reasonable use.



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• FACTS:

User of a section line roadway to access their property across an adjacent owner's land built a road and tore down the neighbor's fence without court authority. Both sides filed suits (1) to consider the right of access, and (2) to collect damages for the destroyed fence.



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• TRIAL COURT RULING:

First Hearing: User of section line roadway “had no authority to open the section line road, and, as a result, had no right to remove the fence.”



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•Cont'd...TRIAL COURT RULING:

Second Hearing: “The District Court...allowed the Blake’s road to stay, but awarded damages for the destruction of the Goodwin’s fence. The Blakes now appeal for a second time.” “...the Blakes met the requirements to demonstrate their entitlement to an easement by necessity...”.



•COURT OF CIVIL APPEALS RULING:

First Ruling: The COCA vacated the trial court decision and remanded it back to the trial court because “neither the common law of easements nor 69 O.S. 2011 Section 1201(a) require that a land owner seeking to use a section line for access to their own property ‘open’ the section line to do so.” Remanded “to inquire into the reasonableness of the Blakes actions in attempting to create access along the section line, and to decide whether the Blakes had a right to destroy the Goodwins’ fence...”.



•COURT OF CIVIL APPEALS RULING:

Second Ruling: Appeal by the road user. Affirmed trial court holding there was an easement by necessity on the section line, although it did not need to be an “absolute” necessity. Affirmed refusal to allow destruction of fence without court intervention. Held “we find no legal principal that a land owner has an automatic easement to place an access road across a neighbor’s property if a section line was used.”



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Also rejected (1) ability to destroy the fence because it encroaches on a state or county owned easement,” and (2) a right to remove the fence as a “private nuisance”.

[The COCA appears to contradict itself by first saying there is not any need to seek to officially “open” a section line roadway, and then saying “we find no legal principle that a landowner has an automatic easement to place

an access road across a neighbor's property if a section line was used.”

This apparent inconsistent rule needs to be addressed by the Oklahoma Supreme Court: does an adjacent owner have to officially “open” a section line roadway for access before making any use of it.]

11. SALINAS v. SHEETS **(2018 OK CIV APP 21)**

• **GENERAL TOPIC:**
ACQUIESCENCE

• **SPECIFIC TOPIC:**
**DOES ACQUIESCENCE REQUIRE
UNCERTAINTY AS TO BOUNDARY?**



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•HOLDING:

Construction of a fence by the owner of land on both sides, and long time use and recognition of the fence as a boundary line, establishes acquiescence even where there is no evidence of uncertainty as to the boundary when the fence is installed.



FACTS:

Owner of entire tract installed a north-south fence. Thereafter the east and west tracts were conveyed or inherited by third parties. The legal description for the east tract included an 8-acre tract on the west side of the fence. After more than 15 years of both sides; owners treating the disputed 8-acre tract as being part of the western parcel, the owner of the eastern tract installed a gate to prevent the owner of the western tract from crossing the disputed tract to reach the western tract.



• TRIAL COURT RULING:

The Trial Court ruled that the evidence established title by both adverse possession and acquiescence in the western tract owner.



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•COURT OF CIVIL APPEALS RULING:

COCA affirmed the trial ruling that title was in the owner of the western tract by acquiescence. It also held that a prior COCA ruling (McGlothlin) requiring uncertainty as to the boundary in order to find acquiescence is contrary to other COCA rulings.



[AUTHOR'S COMMENT:

The various Oklahoma cases relied on are all COCA cases. We need a Supreme Court ruling to resolve this issue as to whether uncertainty as to the boundary must exist when the fence is installed.]

12. BANK OF AMERICA
v. DASOVICH
(2018 OK CIV APP 22)

•GENERAL TOPIC:

**AUTHENTICATION OF FOREIGN
JUDGMENT**

•SPECIFIC TOPIC:

**IS LACK OF AUTHENTICATION OF
FOREIGN JUDGMENT WAIVABLE**



•HOLDING:

Where mortgage foreclosure action is filed in state court and, after answer is filed, is removed to Federal Court which issued judgment against debtor and remanded to state court for sale, the lack of full “authentication” of a foreign judgment (a federal judgment), is waivable and not jurisdictional.



FACTS:

A mortgage foreclosure action was filed in state court and, after answer was filed, was removed to Federal Court which issued judgment against debtor and remanded to state court for sale. The federal judgment was certified, but not “authenticated”.



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• **TRIAL COURT RULING:**

Trial Court held the failure to have an authenticated “federal judgment” was a jurisdictional defect rendering any attempted sale void.



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- **COURT OF CIVIL APPEALS RULING:**
COCA reversed holding that the absence of an “authenticated” federal judgment was not jurisdictional and could be waived; and by waiting 5 years during active litigation on the attempted sale any defect was waived.



13. WELLS FARGO BANK v. TAYLOR **(2018 OK CIV APP 24)**

- **GENERAL TOPIC:**

**OWNER OF NOTE FOR MORTGAGE
FORECLOSURE**

- **SPECIFIC TOPIC:**

**OWNERSHIP OF NOTE CAN BE
PROVEN THROUGH LOST NOTE
AFFIDAVIT FOR FORECLOSURE**



•HOLDING:

A petition can be amended to include a missing page from mortgage containing the legal description, and lender can show it holds note with an endorsement on the note in blank. By statute the provider of the funds is the mortgagee. MERS is not the mortgagee, although a “nominee” is an “agent” by case law and by T.E.S. 24.12.



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- **FACTS:**

Lender filed foreclosure and failed to include the page of the recorded mortgage which included the legal description. Lender filed an Amended Petition with the corrected mortgage. MERS was the alleged mortgagee although a lender provided the money. The note was endorsed in blank by the original lender, and the mortgage was assigned by MERS to the Plaintiff.



- **TRIAL COURT RULING:**
Trial Court granted summary judgment to lender as holder of original note (endorsed in blank), and holder of mortgage since it held the note.
- **COURT OF CIVIL APPEALS RULING:**
COCA affirmed Trial Court



[AUTHOR'S COMMENT:

- (1) This case relies in part on TES 24.12 dealing with mortgages held by MERS*
- (2) It recognizes the existence of a “nominee” like MERS as an “agent”.]*

14. ASSET ACCEPTANCE v. PHAM **(2018 OK CIV APP 26)**

- **GENERAL TOPIC:**

**DEFAULT JUDGMENT IN
COLLECTION ACTION**

- **SPECIFIC TOPIC:**

**NEED FOR MOTION, NOTICE AND
HEARING BEFORE ANY DEFAULT
JUDGMENT**



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•HOLDING:

Where a pro se Defendant communicates with the Plaintiff's attorney, such contact triggers the need for a: (1) motion, notice and hearing before default judgment, and (2) disclosure of contact to the Court.



- **FACTS:**

Lender filed action for collection of unpaid debt, and advised debtor the Plaintiff would not proceed until meeting all requirements under FDCPA. Defendant did not “enter an appearance or file any answer...”, or otherwise “make an appearance”. Plaintiff and Defendant exchanged communications about the debt, and Plaintiff ended contact telling Defendant “We will proceed with this matter.” Then it secured a default judgment, without official notice to defendant.



When garnishment started, Defendant filed Petition to Vacate Judgment and filed Answer/Counterclaim.



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- **TRIAL COURT RULING:**

Trial Court entered default judgment for lender and denied Petition to Vacate, relying on Rule 10 which provides: “Notice of taking default is not required when the defaulting party has not made an appearance.” Defendant appealed.



- **COURT OF CIVIL APPEALS RULING:**
COCA reversed and remanded: (1) holding there must always -- in all circumstances -- be a motion, notice of motion, notice of a hearing and a hearing before taking default, but there was none, and (2) holding that due to the statement in the Summons that “all collection efforts, including our proceeding with this lawsuit,



will cease until we respond as required by law, the Plaintiffs were required to disclose their intent to the debtor to seek a default, but there was no notice given, (3) holding that the Plaintiff must advise the court of (a) no notice to Defendant of intent to seek default, and (b) offer of settlement negotiations, and (4) no explanation for differences in actual debt of \$245 versus claimed debt of \$1,300.



[AUTHOR'S COMMENT:

- (1) Rule 10 provides: “Notice of taking default is not required where the defaulting party has not made an appearance.” But Schweigert declares (§ 15) “This [Rule 10] language mandates that a motion must be filed in all instances, even when a party fails to make an appearance.” Which holding is correct?*
- (2) There is no discussion of how the Plaintiff failed to “respond as required by law.” The Plaintiff provided the lender’s name, and the amount of the debt.*

- (3) The Plaintiff told the Defendants: “We will proceed with this matter,” which clearly advises of the intent to proceed to take a default judgment.*
- (4) It is the Defendant’s duty to dispute the amount of the debt, not the Plaintiffs.*
- (5) Disclosure of settlement negotiations are not admissible per 12 §2408.]*

15. STATE ex rel. OF
TRANSPORTATION v. PENNINGTON
(2017 OK CIV APP 2)

- **GENERAL TOPIC:**
CONDEMNATION
- **SPECIFIC TOPIC:**
DATE FOR MEASURE OF DAMAGES



•HOLDING:

It was proper for the date for measure of damages to be on a date after the funds are paid into court, if the “preliminary” (pre-payment) plans are changed at the request of the land owner, so that damages were based on the “current” plans. It was proper to exclude evidence relating to such “preliminary” plans.



FACTS:

The original offer for a 1-2 acre taking, based on the commissioners' estimate, was \$342,000, which ODOT paid in. ODOT objected to the amount and demanded a jury trial. There was a “preliminary” set of plans before such payment. After the payment was taken by the landowner, a new “current” set of plans were developed to satisfy complaints of the land owner.



• TRIAL COURT RULING:

Trial court held that the valuation would properly be based on the “current” plans, since those were the real ones. All evidence being offered by the landowner based on the “preliminary” plans was rejected as irrelevant. Evidence of ODOT’s appraiser over-billing in other projects was rejected as not relevant to this case. ODOT’s appraiser testified the value was \$16,800, and the land owner’s appraisal was \$161,700. Jury awarded \$55,600. Land owner was directed to repay to ODOT the excess payment of \$286,400. Land owner appealed.



•COURT OF CIVIL APPEALS RULING: **COCA Affirmed.**



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16. STATE ex rel. DEPT. OF
TRANSPORTATION v. H&L DOUBLE
MC, LLP
(2018 OK CIV APP 54)

•**GENERAL TOPIC:**
CONDEMNATION

•**SPECIFIC TOPIC:**
METHOD OF CONDEMNATION
APPRAISAL



•HOLDING:

Use of “larger parcel” appraisal method is acceptable, although “slide back” method is not acceptable.



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• **FACTS:**

**ODOT took 6.8 acre tract.
Commissioners appraised it at \$103,850,
and both parties appealed.**



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• TRIAL COURT RULING:

At trial the ODOT appraiser used the “larger parcel” method since the small parcel had no practical value standing alone, and also used sales comparisons. The initial jury verdict of \$30,400 included some inconsistent language and a new trial was ordered. The ODOT appraisal was \$31, 415. The jury verdict was \$33,000. Land owner appealed.



•COURT OF CIVIL APPEALS RULING:

COCA affirmed, finding the larger parcel with sales comparison methodology was acceptable but confirmed that the slide-back method was not acceptable, but was not used.



17. HSBC BANK v. SANER
(115,604; April 11, 2018;
UNPUBLISHED)

• **GENERAL TOPIC:**

**MORTGAGE FORECLOSURE
STANDING**

• **SPECIFIC TOPIC:**

LOST NOTE AFFIDAVIT
ESTABLISHES STANDING



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•HOLDING:

Use of lost note affidavit can establish standing to foreclose a note and mortgage.



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FACTS:

Note was endorsed from the original lender to several subsequent lenders. The note was lost but a copy of the lost note showed an endorsement from the last holder in blank. The alleged holder of the note filed a mortgage foreclosure, and thereafter, a subsequent alleged holder used a lost note affidavit to establish that the subsequent lender was the proper owner (not holder), and was properly substituted as the foreclosing lender.



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• TRIAL COURT RULING:

Summary judgment was granted to lender even after borrower had challenged its standing multiple times. The borrower filed bankruptcy twice and it was dismissed once and then the second time leave was granted to allow the lender to proceed in state court.



The borrower successfully requested the trial court vacate the lender's judgment because the substituted Plaintiff/Lender did not hold the note when foreclosure was filed. Lender appealed.



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•COURT OF CIVIL APPEALS RULING:

COCA reversed the vacation order and held the substituted foreclosing lender was the true owner of the note under the lost note affidavit.



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While the lender was chastised for causing confusion as to whether it held the original note, or claimed ownership under an affidavit of lost note, the error was irrelevant, since the substituted Plaintiff did own the note at the time of the foreclosure.



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**18. REASNOR v. DAVIS
(114596; UNPUBLISHED, PETITION FOR
CERT DENIED OCTOBER 2, 2017)**

•GENERAL TOPIC:

REFORMATION OF DEED

•SPECIFIC TOPIC:

**STATUTE OF LIMITATION TO
CORRECT DEED WORDED CONTRARY
TO PARTITION ORDER (TENANT IN
COMMON INSTEAD OF JOINT
TENANT)**



•HOLDING:

Deed incorrectly conveying as tenant in common instead of joint tenant, as was directed in partition order, can be reformed within 5 years from discovery of error rather than from date of filing of deed.



FACTS:

Partition order directed parties to convey land to grantees as joint tenants (not tenants in common). Deed omitted joint tenancy wording and was presumed to be tenants in common. Deed was filed. More than 5 years after the deed was filed, a grantee died and the error was discovered. The joint tenancy survivor sued to reform deed or enforce the order.



• TRIAL COURT RULING:

Trial Court granted judgment to the holder of the tenant in common interest based on the passage of the statute of limitation being 5 years from the filing of the erroneous deed. The claim was based on mutual mistake.



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•COURT OF CIVIL APPEALS RULING:

COCA reversed the trial court and directed someone “to execute a corrected deed conforming with the partition order or, in the alternative, to file and record the partition order pursuant to the requirements of 12 O.S. 2011 Section 687, 16 O.S. 2011 Section 31, or other applicable statutes.”



► [AUTHOR'S COMMENT:

There are 4 other Oklahoma Supreme Court cases issued in 2016 holding the 5-year statute of limitation for mutual mistake runs from the filing of the deed and not the discovery of the error: See Calvert v. Swinford (2016 OK 96, and 2016 OK 100, and 2016 OK 104), and see Scott v. Peters (2016 OK 108) (2)]

VI. TITLE EXAMINATION **STANDARDS CHANGES**



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A. 2018 REPORT OF THE TITLE EXAMINATION STANDARDS COMMITTEE OF THE REAL PROPERTY LAW SECTION

Proposed Amendments to Title Standards for 2019, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 9, 2018. Additions are underlined, deletions are indicated by ~~strikeout~~.



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The Title Examination Standards 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 at its annual meeting in Tulsa on Thursday, November 8, 2018.

Proposals approved by the Section were presented to the House of Delegates at the OBA Annual Meeting on Friday, November 9, 2018, and were approved. Proposals adopted by the House of Delegates become effective immediately.

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

PROPOSAL NO. 1

The Committee proposes to add new to Standard 3.6, to make clear the purpose and effect of the filing of a Lis Pendens.

3.6 LIS PENDENS.

Oklahoma law recognizes the doctrine of lis pendens.
The doctrine has its genesis in common law and equity
jurisprudence and has been partially codified at 12
O.S. §2004.2.



The recorded lis pendens notice does not impress the affected property interest with a lien, encumbrance or defect but rather operates to bind third parties with notice that any interest in the real property affected by the pending litigation will be subject to the outcome of the litigation.

A recorded lis pendens notice is simply notice of pending litigation which may affect the described real property. The examiner should carefully review the underlying litigation and determine whether the litigation affects the interests under examination. No release of the lis pendens notice need be recorded.



Authority: 12 O.S. §2004.2, *White v. Wensauer*, 1985 OK 26, 702 P.2d 15 (Okla. 1985).

PROPOSAL NO. 2

The Committee recommends a caveat be added to Standard 35.3 B to make examiners aware of a provision in the new subdivision standards for the City and County of Tulsa regarding the divisions of land involving tracts of five acres or greater.



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CAVEAT: A deed of land within the city limits of the City of Tulsa or within the unincorporated area of Tulsa County, which divides the land into two or more tracts, all of which are greater than five (5) acres, requires that an application be made to the head of the Land Development Services Division of the Indian Nations Council of Governments (INCOG) for exemption from lot split and subdivision requirements. Such exemption shall be endorsed on the face of the deed. This exemption is required regardless of whether the land being divided is unplatted or comprises less than a full platted lot.



The failure to obtain the exemption will not affect the marketability of the title.

Authority: Section 10-130 Tulsa Metropolitan Area Subdivision and Development Regulations.



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**B. 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”***

**MAY 18, 2019 AGENDA
(As of MAY 13, 2019)**

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

***[Note: if you want to download a free pdf copy of the current
2019 TES handbook, go to www.eppersonlaw.com]***



___**SATURDAY, MAY 18, TULSA (TULSA COUNTY BAR ASSN. CENTER)**___

| Speakers (Sub-Comm.) | Standard# | Status | Description |
|-------------------------|-----------|--------|-------------|
|-------------------------|-----------|--------|-------------|

BUSINESS/GENERAL DISCUSSION OF CURRENT EVENTS

9:30 a.m. – 10:00 a.m.

Hot Topics: General Questions:

Kraettli Epperson

Legislative Report:

Ryan Schaller

Previous Month's TES Committee Minutes:

Barbara Carson

PRESENTATIONS

=====PENDING=====

10:00 a.m. – 10:45 a.m.



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| | | | |
|---------------------------------------|---------------------------|-------------------------------|---|
| <u>Wimbish</u> Astle | 17.4 | May Draft (#1) | <i>TRANSFER ON DEATH DEEDS</i> Need to clarify the Comment to make it clear that if the spouse joins on the initial TODD, he/she does not need to provide a later deed to the same grantee. |
| <u>Astle</u> ?? | NEW & 35.4 | May Draft (#2) | <i>FOREIGN STATE COURT PROCEEDINGS OR ACTIONS</i> Need new Standard to reflect impact of recent Oklahoma case holding the life of a foreign judgment is not Oklahoma's 5-year dormancy statute, but the dormancy statute where the judgment originates. Reference to existing 35.4 in the new Standard is needed also. |

10:45-11:00 a.m. BREAK*****

PRESENTATIONS (CONT'D)

11:00 a.m. – 12:00



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| <u>Schaller</u> McMillin (Schuller) | 34.2 & 30.14 | May Draft (#1) & Report | <i>BANKRUPTCY STANDARD UPDATE</i> Proposing corrections of typos in Standard 34.2. (Draft#1) Studying impact of 11 USCA §549 (no notice of bankruptcy in absence of local filing). (Report) |
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|----------------------------------|-------------|-------------------------------|--|
| <u>Astle</u> Schaller | 14.8 | May Draft (#1) | <i>FOREIGN LIMITED LIABILITY COMPANIES...</i> Is a Foreign Limited Liability Company required to be registered in OK prior to transferring real property. |
|----------------------------------|-------------|-------------------------------|--|



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| <u>Sullivan & Reed Kempf</u> | 14.10 | May Report | <p><i>LLC WITH SERIES</i></p> <ol style="list-style-type: none"> 1. Resolving situation where a conveyance is made to a Series LLC when it was not allowed. 2. There are cases suggesting that the presence or absence of “periods” in the “LLC” portion of the name of a limited liability company is significant and created two different company names. This issue needs to be discussed and perhaps covered in the existing TES. 3. There is growing practice of LLC operating agreements authorizing corporate officer titles (e.g., president or vice president) for what should be the “manager”. This issue needs to be discussed and perhaps covered in the existing TES. |
|---|--------------|-------------------|--|



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| <u>Seda & Williams</u> ?? | ?? | May Report | <i>AFFIDAVIT OF HEIRSHIP</i> An effort is being made to revise and clarify the existing statute (16 O.S. §67) authorizing the use of an Affidavit of Heirship in lieu of a probate in both testate and intestate settings. If such legislation is adopted, the current title standard will need to be revised accordingly. |
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| <u>Shields Keen</u> | NEW | May Report | <i>STIGLER ACT AMENDMENTS & MURPHY CASE</i> Report on status of Murphy case and impact of Stigler act on Oklahoma titles. |
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***** **END OF PRESENTATIONS** *****

___***SATURDAY, JUNE 15, STROUD (STROUD CONVENTION CENTER)***___

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| <u>Wittrock</u> ?? | NEW | June Report | <i>REMOTE ON-LINE NOTARY</i> Monitoring pending legislation to allow remoter on-line notarization, and its impact on our standards. |
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| <u>Seda?</u> ?? | 30.1 et seq | June Report | <i>MRTA/SEVERED MINERALS</i> ?? |
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| <p><u>Brown</u> McLean Wimbish</p> | | <p>Apr Tabled</p> | <p><i>AUTHORITY FOR STANDARDS</i> Should there be a Standard explaining whether the TES Committee relies upon only “precedential” appellate opinions, but also on “persuasive” opinions: 1. COCA unpublished opinions; 2. COCA opinions published by authority of COCA; 3. COCA opinions published by authority of OK SUP CT; and 4. OK SUP CT published opinions. Impact of COCA case holding: PROBATE CASES BEING FILED IN COUNTY OTHER THAN RESIDENCE -- see In Matter of Estate of Walker, 2018 OK CIV APP 63</p> |
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| <u>Astle</u> Wittrock Ward | | Apr Tabled | <i>RECORDING SCANNED COPIES OF “WET” SIGNED INSTRUMENTS IN THE LAND RECORDS ??</i> |
|---|--|-----------------------|---|

===== ***REJECTED*** =====

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|-------------------------------------|------------|---------------------|---|
| <u>Orlowski</u> Epperson | 1.1 | Feb Drop | <i>MARKETABLE TITLE</i> Is “marketable title” the same as “marketable record title”? Should the TES Committee explain the difference? ?? |
|-------------------------------------|------------|---------------------|---|

| | | | |
|---|-----------|---------------------|---|
| <u>Brown & Epperson</u> ?? | ?? | Feb Drop | <i>RELEASE OF LIS PENDENS</i> Should the new TES be clarified regarding the possible need to extinguish or release an improper lis pendens; meaning filed where no land is involved? (see <u>Bock v. Slater</u> , 2010 OK CIV APP 90) |
|---|-----------|---------------------|---|



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|-------------------|----------------|-------------|--|
| (??) ?? | 7.2 | Feb Drop | <i>MARITAL INTERESTS...(purchase money mortgage -- see <u>Wilmington v. Marshall</u>, COCA, 9/18/18 ??</i> |
| (Sullivan?) ?? | 30.1 et seq | Feb Drop | <i>MRTA -- self-executing: See <u>Corban v. CHK</u>, 149 Ohio St. 3d 512</i> |

=====TABLED TO 2020=====

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COMMITTEE OFFICERS:

Chair: Kraettli Q. Epperson, OKC
(405) 848-9100
kqe@meehoge.com

Comm. Secretary: Barbara Carson, Tulsa
(919) 605-8862
barbaracarson@yahoo.com

Vice Chair -- Legislative Reporter: Ryan Schaller

Vice Chair -- OBA Bulletin Board Highlights: Faith Orłowski

Vice Chair -- Handbook Editor: Rhonda McLean

Vice Chair -- Title Update Seminars: Kraettli Q. Epperson

(C:\MYDOCUMENTS\BAR&PAPERS\OBA\TES\2019\Agenda 2019 05 (May)

2019 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 | 19 | Tulsa | Tulsa County Bar Center |
| February | 16 | Stroud | Stroud Conference Center |
| March | 16 | OKC | Oklahoma Bar Center |
| April | 13* | STROUD | STROUD CONFERENCE CENTER |
| May | 18 | Tulsa | Tulsa County Bar Center |
| June | 15 | Stroud | Stroud Conference Center |
| July | 20 | OKC | Oklahoma Bar Center |
| August | 17 | Stroud | Stroud Conference Center |
| September | 21 | Tulsa | Tulsa County Bar Center |

***NOTE: THIS IS THE SECOND SATURDAY, NOT THE THIRD SATURDAY TO AVOID EASTER WEEKEND!**

Tulsa County Bar Center
1446 South Boston
Tulsa, Oklahoma 74119-3612

Stroud Conference Center
218 W Main St.
Stroud, Oklahoma 74079

Oklahoma Bar Center
1901 N. Lincoln Blvd.
Oklahoma City, OK 73152-3036



LIST OF THE LATEST 10 ARTICLES,
AUTHORED BY KRAETTLI Q. EPPERSON
(OMITTING DUPLICATES)

(last revised April 25, 2018)

308. “‘Marketable Title’ vs. ‘Defensible Title’ When Examining Oil and Gas Interests: An Overview of the Law in Oklahoma”, Joint Seminar Oklahoma City Association of Professional Landmen & American Association of Professional Landmen Field Landman, Oklahoma City, Oklahoma (April 19, 2018)
306. “Constructive Notice: Oklahoma’s Hybrid System Affecting Surface and Mineral Interests”, 89 Oklahoma Bar Journal 40 (January 2018)
304. “Update on Oklahoma Real Property Title Related Cases: Oklahoma Supreme Court Cases & Oklahoma Court of Civil Appeals Cases for 2016-2017”; Oklahoma Bar Association Real Property Law Section Annual Meeting, Oklahoma City, Oklahoma



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304. "Update on Oklahoma Real Property Title Related Cases: Oklahoma Supreme Court Cases & Oklahoma Court of Civil Appeals Cases for 2016-2017"; Oklahoma Bar Association Real Property Law Section Annual Meeting, Oklahoma City, Oklahoma City, Oklahoma (November 2, 2017)
302. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards: Revisions for 2015-2016", Boiling Springs, Woodward County Bar Association: Boiling Springs State Park, Woodward, Oklahoma (September 19, 2017)
301. "Examination of an Abstract of Title in Oklahoma: A Procedural Outline," Oklahoma Bar Association Solo and Small Firm Conference, Durant, Oklahoma (June 24, 2017)
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)



292. "Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions, & Title Examination Standards Revisions for 2014-2015", Oklahoma Bar Association: Cleverdon Round Table Seminar, Oklahoma City, Oklahoma (May 19, 2016) and Tulsa, Oklahoma (May 20, 2016)
276. "Marketable Record Title: A Deed Which Conveys Only the Grantor's 'Right, Title and Interest' Can be A 'Root of Title'", 85 Oklahoma Bar Journal 1104 (May 17, 2014)
275. "Title Examination Standards in America and in Oklahoma", Oklahoma City University, School of Business "Energy Law Masters Program" (Property Law), Oklahoma City, Oklahoma (May 14, 2014)
274. "'Defensible Title' When Examining Oil and Gas Interests: An Overview of the Law in Oklahoma, and Oklahoma Severed Minerals Affidavit of Heirship", Garfield County Bar Association, Enid, Oklahoma (May 13, 2014)



Any questions?

Contact Information:

PHONE: (405) 848-9100

FAX: (405) 848-9101

E-mail: kqe@meehoge.com

Webpages: www.meehoge.com

www.EppersonLaw.com



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